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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
Case No. 91-49738 CA 22

HOWARD A. ENGLE, et al.,
Plaintiffs,
vs.
PHILIP MORRIS COMPANIES, INC., et al.,
Defendants.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
Case No. 94-08273 CA 30

HOWARD A. ENGLE, M.D., et al.,
Plaintiffs,
vs.
R.J. REYNOLDS TOBACCO COMPANY, etc., et al.,
Defendants.

399 Lexington Avenue
New York, New York
April 17, 1997
9:20 a.m. to 5:59 p.m.

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EXHIBITS

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Videotaped Deposition of JAMES J. MORGAN

Taken before Victor Salvaggio, Jr., Certified Shorthand Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

ON BEHALF OF THE DEFENDANTS PHILIP MORRIS COMPANIES, INC. and LORILLARD

ON BEHALF OF THE DEFENDANTS PHILIP MORRIS COMPANIES, INC. and LORILLARD

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APPEARANCES

ON BEHALF OF THE DEFENDANTS PHILIP MORRIS COMPANIES, INC., and LORILLARD

ON BEHALF OF THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY

ON BEHALF OF THE DEFENDANT BROWN & WILLIAMSON

ON BEHALF OF THE DEFENDANT BROWN & WILLIAMSON

ON BEHALF OF THE DEFENDANT LIGGETT GROUP

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MR. ROSENBLATT: Prior to the deposition beginning, Mr. Heim asked me if I intended to ask any questions regarding the settlement discussions which received so much attention in the Wall Street Journal yesterday. It was a front page story. It's a front page story in the New York Times today, and obviously there is a media frenzy concerning the settlement discussions which are supposedly going on between Philip Morris, RJ Reynolds and some other lawyers. I told Mr. Heim it certainly was my intention to ask Mr. Morgan questions on what he would do with the settlement, what he knew about the settlement, what his position was, what Mr. Bible's position was and Mr. Heim told me in no uncertain terms, not only would he not permit those questions, but he definitely wanted to avoid a situation where the witness would be in front of the video camera declining to answer those questions, and with that background, I'm making this statement for the record.

Obviously, I'm not going to engage in useless acts, and I take Mr. Heim at his word, so that as I want to ask questions about the settlement, Mr. Morgan's knowledge of the

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settlement, his position about it, whether he attended meetings, what Mr. Bible has done with respect to the settlement, what Mr. Bible told him about the settlement, I'm not going to be permitted to ask those questions.

MR. HEIM: I would simply say that Mr. Rosenblatt has correctly characterized our discussion. I have taken that position. I believe Mr. Hardy will take the same position and our view is that any such questioning is outside the scope of permissible discovery.

MR. HARDY: That's my position for Philip Morris, and, for the record, with respect to the Broin case, and I just want to be sure it's clear.

We understand, Mr. Rosenblatt, that you are not waiving or giving up that urge. You may choose to pursue it in the future. We simply wanted to ensure that the questions would not be asked on video today and we can deal at some subsequent day, if you choose, with the subject of whether you are entitled to go into that with Mr. Morgan later or someone else later. Thank you.

I'll go get the witness.

Since we have a new video operator, I

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just want to confirm that the video portion will be still photography with no zooming in or retracting back, but a fixed position on the witness from the table level up, and when you get the shot there, is the top taped part still not visible?

Thereupon:

JAMES J. MORGAN, was called as a witness by the Plaintiffs, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROSENBLATT:

Q State your name, please, and your business address.

A James J. Morgan, Philip Morris, Incorporated, 120 Park Avenue, New York, New York 10017

Q And what is your position, your present position with Philip Morris?

A I'm currently the president and chief executive officer of Philip Morris, Incorporated.

Q And you've occupied that position since when?

A Since December of 1994.

Q Have you ever had your deposition taken

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before today?

A Yes, I have.

Q In what kind of case?

A A trademark case many years ago.

Q Has that been the extent of your previous experience with depositions?

A Yes, it is.

Q So you have given one deposition in your life before today?

A I think so.

Q Okay. What did you do to prepare for this deposition in terms of meetings?

A I had several meetings for several hours each with the counsel, Mr. Hardy.

Q Who else was present at those meetings?

A Mr. Heim was present at one of them, I believe, two of them, and intermittently, very intermittently some of our corporate counsel was there.

Q Now, when you say several meetings, give me your best estimate as to how many.

A Four.

Q And several hours, so each session lasted approximately how many hours?

A Some of them lasted two hours, some of

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them lasted four hours. It's sort of an average of several hours.

Q When was the most recent meeting?

A Yesterday.

Q At the meeting yesterday, were you given information about the testimony of Mr. Schindler who was deposed on Monday, or Dr. Spears, who was deposed on Tuesday of this week?

MR. HARDY: Object, that's invasion of attorney-client privilege and work product and instruct the witness not to answer the question.

MR. HEIM: Same objection.

BY MR. ROSENBLATT:

Q In my reading about you, you are described mostly as a market guy.

Is that, I mean, do you accept that designation in terms of your area of specialty in the tobacco business, that you are essentially a specialist in marketing?

A I think I was at a point. I think to do the job I'm doing now, I have to be more of a generalist over a number of subjects.

Q Okay. Now, my definition of marketing is to convince the consumer that my product is better than the other guy's product. Obviously

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that's an oversimplification, but isn't that the bottom line of marketing?

A That's a fair characterization in a very simplistic sense.

Q Okay. How would you define marketing and what does it encompass?

A I would define marketing as an integrated process which combines a successful marketing, a high quality product, packaged well, distributed thoroughly, which is presented to the public in a way that makes the product a product that or brand that they would choose to use.

That's also a very simplified explanation.

Q Does advertising come within the overall umbrella of marketing?

A Yes, it does.

Q Does media relations come under that general umbrella?

A Not necessarily.

Q How about public relations?

A Well, let me back up and ask -- I should have said what do you mean by media relations because that's a --

Q Dealing with reporters, issuing

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statements that would be disseminated to the media, talking to the New York times, the Wall Street Journal, stuff like that.

A That's what I thought you meant and my answer would be not necessarily.

MR. HARDY: Let me say for the record, Mr. Morgan, be careful because the reporter can only get down what one person is saying at a time, so be sure Mr. Rosenblatt is finished with his question before you start to talk so the reporter can get what both of you say.

BY MR. ROSENBLATT:

Q You have been in the tobacco business for how many years?

A I started with Philip Morris in June of 1963.

Q And you never worked for a tobacco company before that?

A No, that was two days after I graduated from college.

Q Did they recruit you?

A Yes.

Q While you were in college?

A Yes.

Q Okay. A frank statement to cigarette

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smokers. What does that mean to you?

A Nothing.

Q A frank statement to cigarette smokers was an advertisement taken out in just about every major newspaper in the country at a point in time and was paid for by Philip Morris and other tobacco companies, and it had to do, generally speaking, with the subject of smoking and health.

Having told you that, does that ring any bells?

A I have some memory, although I think it fairly significantly predates my joining the company. I believe it may be back in the '50's I heard about an ad.

Q Okay. From the time you got into the tobacco business, right up until today, have you ever read a frank statement to cigarette smokers?

A No, I've not.

Q You will get a chance to do so later today.

Vine vidi vici, do those words mean anything to you?

A Yes, they do.

Q What do they you mean to you?

A I believe they are on the crest, the

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Philip Morris crest which is on a lot of our packaging.
Q What do those words mean?
A I do not know Laun, never took it. I believe it means I came, I saw, I concurred.
Q Why would those words be on Philip Morris packaging? Who did you concur? Who did Philip Morris concur?
A I have absolutely no idea why they are on Philip Morris packaging. Philip Morris, the tobacconist, started this name Philip Morris, his name, 150 years ago this year when he opened the tobacco shop in London. I don't know whether he put on his first brand. I don't know where it comes from.
Q I was going to ask you, to your knowledge, when vine vidi vici first appeared on a product.
A I have absolutely no idea.
Q So you don't know if it's been on for two years or for 30 years?
A Or 150.
Q Okay. And as you sit here today, the concept of I came, I saw, I concurred doesn't mean anything to you in the context of the tobacco

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business?
A Not a thing.
Q Okay. Would this, in your opinion, be an legitimate interpretation of those words.
To an outsider, obviously the dominant force in the tobacco business for the last 20 years, approximately, or so has been Marlboro. Marlboro is the absolute number one king of cigarettes, right, in terms of sales?
A That's a fair statement.
Q Okay. And by the way, was there ever another brand of cigarettes that was number one as long as Marlboro has been number one?
A I don't know the answer to that. Certainly, since 1963 and sort of understanding back maybe 10 years more in terms of industry sales and volume, Marlboro has been the number one brand longer than any brand, I'd say, since, 1950.
Q Okay. Would it be a legitimate interpretation I came, I saw, I conquered to mean Marlboro, as a brand, has conquered the market place?
MR. HARDY: Object to the form of the question. Also, it's been asked and answered. The witness has already testified he doesn't know

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why the slogan is on there.
BY MR. ROSENBLATT:
Q This is a new question. I'm simply suggesting to him, from your standpoint, does that seem like a legitimate interpretation?
A No, it really doesn't, and my logic would go like this. I said I didn't know -- you asked whether I knew it had been two years or 30 years. I should have answered it differently because I know it hasn't been two years that it's been on, and, in fact, I know it was on the pack when I joined the company in '63 because I know the Marlboro pack, at least I believe the Marlboro pack hasn't been changed since then, so I would answer your question this way, which is, assuming that I'm correct that it was on the pack in 1963, I remember quite clearly that Marlboro was hardly the leading brand in 1963. It was a very small brand having only a fraction of the size that it has now. So I guess I'd answer you somewhat humorously and say if that were the intent back when the brand had a two or three percent market share, someone was very bold putting that on and assuming that's what was meant.
Q Maybe someone was confident that one day

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that they would concur the market.
A Or bold.
Q But you see my second question helped you along. Earlier you said it could have been two years, it could have been 150 years and then you thought about it and you are telling us that you are absolutely certain that vine vidi vici appeared on Philip Morris products as early as 1963.
MR. HARDY: I object. There is no question. I move to strike counsel's statement.
BY MR. ROSENBLATT:
Q Isn't that true?
A I would like not to characterize it as absolutely certainty. I said to the best of my knowledge.
Q But you are fairly certain?
A I'm reasonably confident.
Q Okay. And you have no idea, if you are correct and if it was on the packaging in 1963, you do not know for how many years prior to '63 it had been on?
A On what pack?
Q On any pack.
A I can't answer that question.

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Q On Marlboro?
A Well, I would assume that it would not have been on Marlboro prior to 1953 when the current package design was introduced.
Q Now, the warnings that you're required to put on your products which have been mandated by Congress, what does the warning say about cancer?
A Well, the warning says about cancer that the Surgeon General has determined that cigarette smoking causes cancer and there are some other things.
Q Okay. Is that Surgeon General's warning true and accurate or is it false?
A That's a, to say, an interpretive statement. I believe it's neither true nor false, but it is a set of words that's subject to considerable debate and discussion.
Q Well, do you think it's subject to considerable debate within the scientific and medical community?
A No. I think the scientific and medical communities have fairly reasonably concluded in their minds that the statement would be fair, but again, it depends on what you mean by the word

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cause.
Q Well, I mean cause has a common sense connotation, doesn't it?
A Well, I'm not sure it has a common sense connotation as much as it's a complex connotation. I think there are different levels of cause.
Q So if you are asked a direct question putting aside, for the moment, the Surgeon General's warning and you are just asked straight out as the president and CEO of Philip Morris, Inc., does Marlboro or Virginia Slims or Benson and Hedges cause cancer, what's your answer to that?
A My answer to that would be that cigarette brands, cigarette smoking may possibly cause cancer.
Q And, therefore, logically extended, if cigarette smoking may cause cancer, then obviously you are selling a product which may cause cancer.
A That is correct.
Q What is your knowledge of the research, and I'm not asking you this from a technical detailed standpoint, but I'm asking you a more general kind of question as to what is your

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understanding of the progress of scientific research, when it may be anticipated that there will be an answer that will satisfy you one way or the other, either cigarette smoking does or it doesn't cause cancer and other diseases?

A My understanding of the sort of the flow of scientific research is that the issue continues to be fairly clear that there is statistical associations between cigarette smoking and cancer, epidemiological studies, but that in spite of the really immense resources that have been put against the subject by a variety of different groups, there still is no process that has been documented and validated that goes from what I would call a lit cigarette to lung cancer, and that process has escaped the best of scientific investigation and thinking, and that's why I think that a more accurate characterization and a fair accusation is that cigarette smoking may cause lung cancer.

Q Okay. But you know based on that answer and since obviously it's not the kind of situation where someone, on a given day, smokes a pack of cigarettes and the next day develops lung cancer. You accept that basically all the research talks

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about a gap in time, smoking for a given period of time and then a disease comes a certain number of years later.

A I'm not sufficiently technically or scientifically knowledgeable to state that as a fact, but from just my general readings, I don't think I disagree with what you are saying.

Q Okay. So can you say, in a practical sense, having described the process as you understand it, ever being at a point in time where one can -- where you could definitively say well, here's the proof, it does cause cancer or it doesn't cause cancer, or is it your feeling based on your reading and from whatever other source, that it's really going to always be pretty much of an unknowable on the issue of pure causation?

A I do not believe it would be an unknowable.

Q Well, what do you see? Can you conceive of an experiment or research that will satisfy you that it's no longer an unknowable?

A You are asking the wrong person if you are looking for definitions of experiment, but I approach it on a common sense basis, which is, there are many, many, many things that we all live

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with and deal with in our lives as human beings, where at one point in time it was not clearly understood the process by which things happen, and not just in the scientific or medical area, just life I think is like that, but one of the marvels of our society and our culture and history is that we tend to find the answers to those because we focus on them, and generally speaking, I think it's a fair characterization of the modern world to say we find more answers than we don't, so I have no reason to believe that the issues and the controversy regarding cigarette smoking and its role in disease won't be found and documented and where everybody can understand the steps along the way. It's just today it is an unproven fact and it's very hard to make conclusive and sort of authoritative dogmatic statements about this until you know the mechanism and the process by which these things happen.

Q Well, the Surgeon Generals and the public health organizations and the American Cancer Society and the American Heart Association and the American Lung Association has apparently not had any difficulty making the association, wouldn't you agree?

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A They have not had any difficulty making the statistical associations and calling that cause. Those groups, which spend hundreds of millions of dollars a year in research in these areas and are truly dedicated to finding these answers, have not found the answer yet. They have not found the process by which one can take a lit cigarette and track it to disease in a human being, nor have they been able to determine why a lit cigarette for some people never contracts to a disease in some other people. It is still, from that viewpoint, it is still a very open subject.

Q But you will agree that from the standpoint of the organizations I just mentioned and the literature and the articles which appear in journals, such as the New England Journal of Medicine, these articles generally start out with the proposition and it's accepted by the public health community and all these organizations and the United States Department of Health and Human Services that cigarette smoking does, in fact, cause lung cancer and other diseases?

MR. HIRM: Object to form.

THE WITNESS: That is what they say.

BY MR. ROSENBLATT:

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Q Okay. That is what they say and that's what they believe. You don't agree with them, but that's what they say and that's what they believe?

A No, I don't know what they believe. I know what they say, but I don't know what they believe about the word cause, and they are, in many cases, many of these people are very reputable people, but they do not define the word cause, to the best of my knowledge. It's left as an open word, nor do they document the process by which it is caused because nobody knows that.

Q Look, if you and I know each other and we were having a cup of coffee and a guy walked into a restaurant and I pointed him out and said to you that guy's got cirrhosis of the liver, it's sad, because that's a serious condition, and then I tell you, you know, last 10 years this guy has been drinking a fifth of vodka every night for the last 10 years and obviously the cause of the cirrhosis of the liver is drinking the vodka for the last 10 years.

I mean, on a common sense cause, you would accept that, wouldn't you, if my facts were correct?

MR. HIRM: Objection to the form.

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hypothetical.

THE WITNESS: In a sort of, if we were pals, as you said, and in a common sense way, I probably would nod my head, but I would not conclude that I knew that that's what caused it because I know so little else about the person. I don't know enough to know, again, as a non scientist, just pals in a bar somewhere, I wouldn't know enough to know about the genetic history of his family, I wouldn't know what else he did in his life, I wouldn't know what else he drank and ate. I just wouldn't know so much that as a pal in a bar, I probably would give you a head nod, but if I was a serious scientist, doctor or researcher, I doubt very much I would stop at that conclusion. I certainly would have to investigate further.

BY MR. ROSENBLATT:

Q Are you a smoker?

A Yes, I am.

Q How heavy?

A Three packs a week.

Q Three packs a week?

A Uh-huh.

Q When did you start smoking?

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A That's -- the word smoking is a difficult word to deal with. I can tell you when I had my first cigarette and then I can tell you, at least in my words, when I started smoking.
Q Tell me when you have your first cigarette.
A My first cigarette I remember vividly. I was nine years old. I lived in Rapid City, South Dakota, my father was in the Korean War in the Air Force, and I suppose like most nine year olds whose father was in the Army or Air Force, my pal Bob Shelton and I were playing Army in the cow pastures behind our house and we had our helmets on, and we had our BB guns and we had our canteen and we went and lay in a ditch waiting for the North Koreans to come over the hill, and we were talking about that and I said boy, we are really ready for him, and he said yeah, but we don't have our cigarettes, and I said oh. He said I'm going to go get some and he went back to his house and he snipped two Pall Malls from his mother and brought them back up, and I remember lying there with my helmet on smoking my first cigarette, terrified that I was going to get sick from it.
Q So is it fair to say that in the context

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of that story, that you associated at nine years of age -- your buddy was also nine?
A Yeah, nine or 10.
Q Give or take?
A Yes.
Q Both of you associated the cigarette with macho, with being a man and being a tough man and ready to take on the North Koreans and kick some butt?
A Well, all the soldiers and Air Force people I knew smoked.
Q Okay. And you associated --
A And my parents smoked.
Q Okay. Did you get sick?
A No, I didn't get sick, thankly.
Q And probably your second cigarette is not as vivid.
A I don't remember smoking again, really. I went to a private school that had no radios, no smoking, no nothing, and I remember every once in a while on holidays, the days off that they give you, going downtown with a group of guys at age 16 or 17 probably having a cigarette.
I would say I started smoking when I got to college and --

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Q On a regular everyday basis?
A Yes, so that's how I'm defining cigarette. Let me put it this way, where I would buy cigarettes, okay? And there were four of us as roommates and all four people smoked and I would say that's where I really started smoking.
Q So you were getting direct smoking and secondhand smoke all at the same time in college?
A No, I was enjoying the direct smoking.
Q But I mean your buddies were smoking in the same room.
A Sure.
Q Okay. And this went on all through college?
A No, actually, basically it didn't. I mean, smoking?
Q Yes.
A Yes.
Q Okay. So from that time when you became a regular steady smoker in college as a college freshman?
A Yes.
Q Okay. Up until today, has there ever been a time during that time frame when you quit for a period of time exceeding a week?

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A Yes.
Q Okay. Tell us about that, the first time you attempted to quit.
A The first time that I attempted to quit and did quit would have been, I'm going to have to be somewhat general, I'm going to say late 1970's.
Q Okay.
A Okay. I don't remember the specific year.
Q Okay.
A And the reason I decided to quit was really an intellectual reason and it had to do with my job, and at that point there was a lot of discussion in the media and sort of just generally, excuse me, this wire keeps tripping me, there was a lot of discussion in the media and sort of the folklore that cigarettes were hard to quit and I would hear stories about people who just, I had friends who said they would stop smoking and stopped like that and there were people clearly who had more difficult times than that.
I decided to quit for the principal of seeing if I can quit. There was no other issue than sort of a professional desire to say, for

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myself, I would just like to see if this is really as hard as people say or as easy as people say and I stopped, and I stopped, again, don't hold me to the specific time, but I stopped for about five or six months I'm going to say, and interestingly my wife kept smoking at that time and we flip-flopped on this as I tell you my history.
My wife kept smoking. I didn't find it difficult at all to quit. I did not miss it. I did do one thing which aided me personally, which is, I carried a straw with me because I wanted again to understand what this was about and I found myself from time to time when I felt like it was a moment that I would enjoy a cigarette, I would hold the straw and that helped my hands at that time.
I started up again because I didn't quit other than to find out what it was like and sort of with the same degree of intellectual approach, I said I want to feel like experiencing quitting, I started up because I enjoyed cigarettes and I wanted to start smoking again.
Q Okay. Before I start asking you some questions about starting up, let's talk about this. Let me ask you a few questions about this

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time of approximately five to six months when you quit.
A Uh-huh.
Q Okay. Now, in terms of your descriptions, obviously you would have proven your point by quitting for a week.
In other words, you smoked for a certain number of years, you told me you wanted to test this theory is it hard to quit, is it not hard to quit, and you quit, and so what I'm saying to you is, why was it necessary to quit for five or six months when obviously you proved to yourself the point after one week?
A I do not think that you prove the point after one week. I continued to smell cigarette smoke, to see people smoking and I must say, after one week, I continued to find cigarette smoking an appealing thing, so I wanted to go until I, again, on an intellectual basis, just decided that I had satisfied myself as to my own personal feelings about what the subject of quitting was all about and then I decided to resume smoking.
Q Now, in the late '70's you were employed by Philip Morris?
A Yes, I was. I was executive

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vice-president of marketing and sales.
Q What brand or brands had you smoked from the time you began as a freshman in college up until the late '70's? A lot of different brands?
A Take a break for a minute.
Q No.
A Okay. I believe I smoked Pall Mall and Lucky Strike when I was in college, and when I went to work for Philip Morris, I started smoking Marlboro and I would say that Marlboro was my regular brand, although, of course, being in the business, I would try all our brands and particularly I'd say in the late 1970's, I might have actually, for a while, switched to Merit because I was involved, deeply involved in the introduction of that brand, so I probably was sort of moving between Marlboro and Merit at the late 1970's. Today I smoke Marlboro Lights.
Q How heavy of a smoker were you when you quit in the late '70's?
A A pack a day.
Q During your smoking career, what is the most smoke? I mean, were you ever a two pack a day smoker?
A I don't think so, no.

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Q Was there a period of time, pack and a half or has it –
A As a regular pattern?
Q Right.
A No.
Q So from college up until today when you have been smoking, it's generally about a pack a day?
A Yes, but that's not to say there there have been days.
Q More and less?
A Yes.
Q Sure, I understand.
A If we are going to characterize it, I would say a pack a day smoker is a fair characterization.
Q Did you ever do this test where you were in a room, either blindfolded or there was some way you could not identify the difference between Merit and Marlboro and some other brand, to find out whether you could tell from the taste without knowing whether you could identify your brand as opposed to some other brand?
A No, I've not. I want to answer your question very specifically. I've never been

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blindfolded and done that.
Q Have you ever done anything similar to that, to test that proposition whether you could identify your brand, if there were five cigarettes, you had no idea which cigarette was your cigarette, whether you could confidently identify your cigarette?
A Yes, I've done that.
Q And you have been successful?
A Generally speaking, I've been successful, but just so we are specific, I wasn't blindfolded. The test would be to have five cigarettes that had no identification on them.
Q Fine.
A Okay.
Q And you are telling me most of the time you could identify your cigarette, but occasionally you couldn't?
A I'd say more often than one would suppose. That's maybe a stupid way to say it. I could identify my cigarette. I couldn't do it 100 percent of the time, but I could generally pick it up, particularly if it were one cigarette against the other.
One versus five, it, I think, if we talk

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to the statistical gurus, would say that's a tougher assignment, but I can generally spot my Marlboro.
Q Okay. So then after this period of about five or six months where you did not smoke a single cigarette, and I know five or six months is approximate, you went back to smoking.
A Yes, I did.
Q The same brand that you had been smoking before you quit or a different brand?
A I don't remember.
Q Okay. And then you became a one pack a day, approximately, smoker again.
A Uh-huh.
Q Okay. Did you ever quit again?
A Yes, I did.
Q Okay. When?
A In 1983. In the summer of '83, actually I left Philip Morris for another job.
Q Atari.
A Yes, sir. You have read.
Q I've done my research. I will talk to you about Atari a little later.
A Okay.
Q You probably like to forget Atari.

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A No, actually, I would do it *all over* again. It was an incredible experience. I loved it.
Q Well, you made a lot of money.
A I did okay. I did okay.
Q According to the reports I read, you got eight million dollars.
A You know and I know not to believe everything you read in the newspapers.
Q But I'm asking you under oath, is that true? You made any eight million dollars?
A When?
Q When you went from Philip Morris to Atari.
A No, I didn't make it right then.
Q During the period of time that you were with Atari, did you make eight million dollars?
A No, I did not.
Q How much did you make?
A During that one year?
Q Yes.
A Half a million dollars.
Q Where does the eight million figure come from?
A It comes from a contract.

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Q That you had with Atari?
A No, I did not have it with Atari. I had it with Warner Communications.
Q Okay. They lived up to their contract and paid you any eight million?
A Yes, they did.
Q Okay. Not bad.
A Not bad at all.
Q Okay. Even though Atari took a nose-dive.
A Atari was a disaster.
Q Okay. Why?
A Why?
Q Yes. You are a marketing guru and obviously when you left Philip Morris to go with Atari, you figured they would become the new Marlboro of video games and they didn't, so tell us why.
A That's a weird comparison.
Q I'm a weird guy.
MR. HEIM: Stipulated.
MR. ROSENBLATT: As will be attested to.
MR. HEIM: I was going to say stipulated.
THE WITNESS: You really want to talk

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about Atari?
BY MR. ROSENBLATT:
Q Absolutely.
A Okay. It was really a fascinating thing. Atari, as you and I are old enough to remember, basically took over the entertainment world for a short time with PacMan, and video games became basically the form of entertainment in the country, and one by one, excuse me, one by one, a group of similar companies, Atari, Coleco, Commodore and Mattell, all of whom had successful video game businesses, all at the same time basically decided to get into the home computer business, and Atari would take the profitability that it was making from video games, which was rather substantial, and it would plow that money back into R and D on home computers trying to fight IBM, who are the guys up in Boston? Digital, Apple, trying to create home computers and they did it and they lost their shirt. Every one of the companies went down the tubes basically trying to become a home computer company.
As a marketer, I got to Atari and my conclusion was that home computers, first of all, I don't believe that home computers will ever be a

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big business. I still believe that today. The thing that we call a computer that's in peoples' homes is really an extension of their office. Home computers are not anyboards. Home computers to me are the microprocessors that's in your refrigerator, it's in your microwave, it's the 12 of them that are in your car. Those are computers, microprocessors, but they enable you to lead your life better through technology, but it's not a keyboard where you sit and say punch in, start my car, and your car starts up. That's just a foreign idea. Anyway –
Q You are basically answering the question why Atari went under?
A Yes.
Q Okay.
A I think I was. And so Atari would take the 20s, 50s and hundreds of millions of dollars that it was making from video games and invest in home computers, which I thought were doomed to failure. The one mistake that I think I made when I got to Atari and you really have to sort of put it into context. When I got there, I killed half of the computer line. Okay? And I didn't shut the whole thing down.

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Q Did a lot of people loose their jobs in that process?
A Not at that point.
Q Later?
A Later. You have to sort of think back, and if we had the Wall Street Journal spread out from the fall of 1983 in front of us, it was uncanny. Every day in the Wall Street Journal there would be a story on page one that home computers were going to take over the world. So I was going so counter culture to what the pundits were reporting, that I didn't have the guts to shut the whole thing down. When I say the guts, I really didn't have the guts to go to Warner who owned Atari and say –
Q Steve Ross?
A And say to Steve Ross, who was a great visionary, say Steve, this is all wrong. Instead, what I did, I negotiated shutting down half the line and keeping some of it going. I think that was a mistake because home computers still are nowhere. The company that theoretically was most successful was Apple and you read everyday today that they are going down the tubes, but the basic failure of Atari from a marketing person or

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business person's viewpoint, was it took its resources and put it in a new area rather than reinvesting it into the core business, and its core business was video game entertainment, and so if PacMan came out in 1977 or 1978, by 1983 all the new games were technically nothing more than a derivative of PacMan and the entertainment value of them was starting to wane and diminish and kids were getting tired and adults were getting tired of basically no changes in technology.
Now, interestingly, would you like me to keep going?
Q No.
A Okay. I figured. Everything you ever wanted to know and more, right?
MR. MOSS: Some of us are interested.
BY MR. ROSENBLATT:
Q It's like asking a guy what time it is and you are telling me how the watch is made. I get the picture.
MR. HARDY: When you are through with the Atari line of questioning, I would like to take a short break.
MR. ROSENBLATT: Okay.
BY MR. ROSENBLATT:

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Q How long were you with Atari?
A I was with Atari for nine months.
Q Okay. Now, the eight million dollar contract you had, I take it didn't require you to work for a certain extended period of time, because you told me you got the eight million dollars, I mean, so it wasn't a deal where you had to work X number of years to get the eight million dollars.
A No, but –
Q Now, you worked nine months for Atari, Atari did, in fact, take a nose dive, it went bad, correct?
A It was sold.
Q It was sold to who?
A To a gentleman named Jack Tramel who formerly had run Commodore Computer.
Q Did you resign or were you asked to leave?
A I was asked to leave because Mr. Tramel wanted to run the company.
MR. HARDY: Mr. Rosenblatt, I don't want to interrupt the examination. I want to be sure, my understanding of Florida rules is that objections are preserved to the time of trial

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except as to form, so I don't need to be making reservation objections now. Is that correct?
MR. ROSENBLATT: Correct.
BY MR. ROSENBLATT:
Q Okay. And you did not leave Atari and go back to Philip Morris, did you?
A No, I did not.
Q So what was your next job?
A I went home.
Q Retired for a period of time?
A A couple of months.
Q And what was your next job?
A After my wife told me that I either needed to get a job or get a lawyer, I decided I better find some gainful employment, and so I started a consulting company.
Q You are not a picnic around the house.
A I was not a picnic around the house.
MR. HARDY: We are through with Atari?
MR. ROSENBLATT: I'm not through with Atari, but I'm through with Atari for now.
MR. HARDY: Okay.
(Thereupon a recess was taken in deposition, after which the deposition continued as follows:)

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BY MR. ROSENBLATT:
Q Okay. Let's go back to your smoking history.
You quit again in 1983?
A Uh-huh.
Q And why did you quit at that time, quit smoking?
A Basically I was in California, my wife was in New York, our oldest -- our youngest daughter was a senior in high school at that point, so that we decided to keep her there and I'm sort of in California, new job, new location and I just decided to stop again. No specific reason other than saying I've been smoking a long time and I'm going to stop. No compelling desire, just sort of different surroundings and I thought I would do it again.
Q Well, did this thought occur to you either at that time or any other time, since I proved to myself that I can quit smoking without any difficulty, since there is a lot of stuff in the newspapers and a lot of doctors and a lot of scientists and the Surgeon General, obviously say that cigarette smoking causes cancer and other diseases, you know, why smoke?

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A Not really.
Q And how long did you quit at that time?
A Oh, boy. Two to three months.
MR. HARDY: I'm sorry?
THE WITNESS: Two to three months.
BY MR. ROSENBLATT:
Q And do you remember the circumstances causing you to decide to become a smoker again?
A No, not really. Just decided. I enjoyed it.
Q Now, you say in '83 you were in California and you had a new job.
A Uh-huh.
Q What job was that?
A That was the Atari job.
Q Okay. Where in California?
A Atari was in Sunnyvale, California.
Q And you started smoking again after two or three months and did you ever quit again?
A Yes, I did.
Q When?
A 1987 I think it was. In the spring of 1987.
Q And why was that?
A I had a collapsed lung at that point. I

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think it's called it spontaneous pneumothorax, if I remember, characteristic of tall thin males, usually younger than I at the time, and I stopped smoking after that.
Q Did your doctor tell you he thought it would be a good idea to stop smoking?
A At that time, yes.
Q And you agreed with him?
A I didn't agree or disagree.
Q You just stopped?
A Common sense.
Q Okay. And how long did you remain a nonsmoker?
A Eight or nine months.
Q So that was the longest time that you were off cigarettes?
A Yes, I would say so.
Q Okay. So what caused your collapsed lung?
A I'm not a doctor. I can tell you in layman's language what I was told, which is, that it is a, what's that called when you are born with something?
Q Congenital?
A Yes, thank you. That tall, a lot of

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tall thin males have a congenital thing where they have a weak spot and at some point their lung collapses.
Q So what was your understanding of why you should stop smoking?
A My understanding was that I didn't want to at that point because something had happened to one of my lungs.
Q Okay. And obviously when you inhale cigarettes, smoke goes into your lungs?
A I think that's correct.
Q Okay. So you quit for eight or nine months?
A Yes.
Q Do you remember the circumstance where you started again?
A Not specifically as an event, but generally I remember that I'd have a cigarette on like Saturday nights after dinner and I would start smoking a cigarette or two in a social occasion.
Q And then within a period of time you went back to your approximately pack a day habit?
A Or a little less.
Q Ever quit again?

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A Yeah, in intermittent places. A lot of times if I go on vacation for two weeks, I don't smoke. There will be weekends that I don't smoke, there will be days that I don't smoke, but I assume your question is a prolonged period of time.
Q Yes. A couple of months or more.
A No.
Q Okay. So '97 was the last time you quit for a prolonged period of time?
A I think that's correct.
Q Okay. Now, in general, what is your wife's smoking history? Is she a smoker today?
A I don't know how one would choose the word. She would be what I would call a regular smoker. Today she smokes one or two cigarettes after dinner, three, four, five nights a week.
Q When she was a regular smoker, how heavy a smoker was she?
A I'm going to guess at this, but I would say just shy of a pack a day.
Q Did she smoke Philip Morris brands?
A I hope so.
Q Well, you know.
A She did.

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Q Okay. You mentioned a child or children. How many kids?
A Two.
Q Ages?
A Today? 35 and 31.
Q Do they smoke?
A Neither one smokes.
Q Neither one smokes. Neither one has ever smoked?
A I know my older daughter smoked one night.
Q I'm not talking about that.
A No.
Q What was her experience? She smoked one night and then apparently never smoked again?
A That's correct.
Q So what was it about that experience that turned her off smoking, if you know?
A I don't know that it turned her off. I remember the night vividly. I don't know if you want me to take the time to describe it----
Q Yes.
A We were in Germany. She had hooked up with a friend and they sat in the hallway outside the hotel room and decided they were going to sit

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up and talk all night and they went down and got a pack of cigarettes they and got a bunch of beer and sat in the hall, smoked, drank beer and talked all night and that's the only time I've ever seen her smoke.
Q Okay. Did she ever describe anything to you about that experience that caused her to decide never to smoke again?
A No.
Q Okay. Now, you mentioned that both your parents smoked.
A Yes.
Q Okay. Your father was in what line of work?
A My father was in the public relations business.
Q Is he living?
A Yes, he is.
Q What is his health?
A His health is excellent.
Q How long did he smoke?
A Oh, I'm going to guess about 35 years.
Q When did he quit?
A He would have quit about 20, 25 years ago.

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Q And why did he quit?
A I have no idea.
Q How heavy a smoker was he?
A I really don't remember.
Q Never had a discussion with him about why he quit?
A No.
Q Is your mother living?
A Yes, she is.
Q How is her health?
A Terrible.
Q How heavy a smoker was she?
A I think she was a light smoker.
Q And without asking you for a lot of detail, but generally, what are the conditions that she's having problems with?
A Generally speaking, female problems and she has problems, bad problems with one of her eyes.
Q Has she ever had any form of cancer?
A I believe she's had breast cancer.
Q Does she have heart disease?
A No, I don't believe so.
Q She's not a smoker anymore?
A No, she's not.

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Q When did she quit?
A I don't know. I really don't know, but in the same time frame as my father.
Q You're based in New York, aren't you?
A Yes, I am.
Q You live in Manhattan?
A No, I do not.
Q Where do you live?
A Connecticut.
Q You come to Manhattan everyday?
A Yes, I do.
Q Okay. If your lawyers ask you to come to the Broin trial which begins in June, I assume you will do so?
MR. HEIM: Objection. I think that's -- I think that invades attorney-client privilege and work product and I instruct the witness not to answer the question.
MR. HARDY: Same objection, same instruction.
BY MR. ROSENBLATT:
Q How did you go about marketing the concept of tar, lower tar in cigarettes?
A Could we sort of step that question?
Q To me as a layman and looking generally

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at the advertisements, a selling point for some brands of cigarettes appears to be my brand of cigarettes is lower in tar than the other guys and therefore, you should buy my brand.
In other words, somehow low tar should be attractive to a consumer.
A Okay. When I joined the company in '63, I would describe that, if we have a discussion here about sort of a historical perspective on the US cigarette industry, and when I joined in '63, tar was, to some degree, already an issue in the world of cigarettes. As early, I think it was 1953, what's now called the famous Readers Digest article, the Readers Digest ran a significant article that at that point, I think the brand was Kent, identified Kent as a brand which had a filter that filtered out tar differently or more effectively than other brands and Kent really skyrocketed as a brand at that point. I don't remember the numbers, but I mean, it went from a very small brand to a very significant brand.
During the '50's, there were also all the filtered brands introduced, and so by the early '60's when I got there, tar was already in the vocabulary, and I would characterize my first

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15 plus years of cigarette marketing as being very focused on tar because the consumers in this country were demonstrating that they would like to try lower tar cigarettes, so there were several things that were happening. One was the tar level of existing brands was being reduced, there were line extensions introduced usually called lights which were lower tar versions of the parent and also during that period of time there were ultra low tar cigarettes introduced, all in response to consumers' obvious desire to try lower tar brands.
Now, the story goes on from there.
Q Okay. Why do you think that consumers were expressing a preference for low tar?
Wouldn't you agree that the reason for that preference was that in the consumer's mind, at least, somehow low tar cigarettes were less hazardous to their health than high tar cigarettes?
A I believe that the consumer was motivated by that.
Q Okay. And, therefore, you, as a marketer, as a businessman, obviously had an incentive to satisfy that preference?

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A We did introduce a number of lower tar brands during that period of time.
Q Did you believe then or do you believe now that lower tar cigarettes are, in fact, less hazardous to the smokers' health than cigarettes that are higher in tar?
MR. HEIM: Object to the form.
BY MR. ROSENBLATT:
Q You can answer.
A I don't believe that to be the case. I don't have enough knowledge to state that, and, therefore, I have no basis to believe it.
Q It's really, to an outsider, it's a very, very strange thing that when there is such an emphasis on low tar, but when you ask someone like you, okay, so what, low tar, high tar, from a health standpoint, and your answer is, as far as you know, low tar, high tar, the difference is meaningless from a health standpoint.
MR. HARDY: I object to the form. That's not a question, that's a statement, improper statement by counsel to an outsider. Move all that be stricken.
Please ask a question.
BY MR. ROSENBLATT:

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Q Isn't that true?
A What?
Q That from your standpoint, the difference between a low tar cigarette and a high tar cigarette is meaningless from a health standpoint as far as you know. Isn't that true?
A It could be true.
Q But you just don't know.
A I don't know.
Q Just like it could be true that cigarette smoking causes cancer, you just don't know. It could be true, but you don't know?
A It's possible.
Q Okay. What Philip Morris brand today is highest in tar?
A I'm going to guess at this because I don't know it exactly. My guess would be it would probably be something like English Ovals non filtered.
Q And what's the lowest brand in tar?
A Merit Ultima.
Q Now, Merit Ultima, how many milligrams of tar?
A One.
Q And the mainstream Marlboro brands, for

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example, how many milligrams? I know there are a lot of different ones.
A I don't mean to be tricky with you, but give me which pack you think is the main stream.
Q You tell me the best seller.
A Marlboro Lights, and that's 11.
Q Okay. So what is the highest Marlboro?
A Sixteen.
Q Which one is that?
A The red. Maybe -- let me correct that because the Marlboro Hundreds full flavor may be 17 or maybe 16. It's either Marlboro Hundreds or Marlboro Red.
Q How many billions of cigarettes does Philip Morris sell in a year?
A Where?
Q In America.
A 230.8 billion cigarettes last year.
Q And worldwide?
A I believe over 800 billion.
Q I won't say the obvious, which is, it's a lot of cigarettes.
Marlboro today has what percentage of the market?
A Depending on the data source, you can

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say it has a third of the market in the United States.
Q What's the number two brand in the United States?
A In any given month or week it jockeys. There are several brands, Winston, Camel, Newport, GPC, Doral and Basic. There are seven brands that are all very close to each other.
Q Bunched in a very distant second place?
A All with about five percent.
Q Okay.
A Each with about five percent.
Q So Marlboro has 33 and a third percent and the others are around five percent?
A That's correct.
Q There really never has been a situation in the tobacco industry since the '50's, let's say, where there was that wide a gap between the leader and second place, has there?
A I don't believe so.
Q And this is a situation which is now gone on for a number of years where Marlboro leads the industry and the second place cigarette is a distant second, not a close second, but a distant second?

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A It changes a little bit, but it's a fair characterization.
Q Okay. What do you attribute Marlboro's incredible success to? Is it the cowboy motif or what?
A I attribute Marlboro's success, which luckily and fortunately I've been able to be part of for so many years, I attribute its success to a variety of things.
Early on we were talking about marketing, and I think I used the word integration. I think Marlboro integrates its product and total proposition extremely well. I think the product itself is a superior product.
Secondly, I think its packaging is excellent. I believe its advertising is excellent. I believe its sales promotion programs are excellent. The quality and consistency with which the product comes, we spend a lot of time and a lot of money making sure that things like the tear tape on the cellophane are always in the right position and not defective. We really try and make that brand the highest quality brand that we can make. I think it's the fact that all those things have been done for so well, for so long so

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consistently. Marlboro has not changed in basically 35 years. The package is the same, the advertising is the same, its product is largely the same. It is Marlboro, it is reliable, it is consistent and the consumers have a great sense of security and comfort and understanding that the Marlboro you get today is the Marlboro.
Q So that if someone smoked Marlboro's 25 or 30 years ago and was in a Rip Van Winkle situation where they were asleep for 25 years and then today bought a package of Marlboro, it would essentially be the same tobacco product as it was 25, 30 years ago?
A Yes. I think its tar has been reduced gradually over that period of time, but it would essentially be the same Marlboro.
Q Is Philip Morris suing the United States Environmental Protection Agency?
A Yes, we are.
Q Okay. And where? Where is that lawsuit pending?
A I believe it's in North Carolina.
Q And why are you suing them?
MR. HARDY: Object. I think that that invades attorney-client privilege, work product

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and I instruct the witness not to answer any questions concerning the subject matter of the lawsuit to the extent that it involves discussions with counsel.
BY MR. ROSENBLATT:
Q I'm not asking you to reveal any discussions you had with counsel. I'm asking you, from a business standpoint, what is your understanding of what this lawsuit is all about?
A From a business standpoint, my understanding is that Philip Morris and others object to the findings of the EPA based on several factors which we feel make the EPA conclusions invalid in comparison to the methods and techniques by which they previously issued reports.
Q Have you ever read the EPA report?
A Not the EPA report itself. I've read a summary of the EPA report.
Q Have you ever read any of the studies which were analyzed in the EPA report?
A Not -- I generally do not read technical data. I read what I would call layman's coverage of technical data.
Q If I mention the, for example, the

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Heriame study out of Japan, does that mean anything to you?
A The Heriame study doesn't. Heriame does.
Q What does Heriame mean to you?
A Heriame to me, every time I hear the name, reminds me of the fact that Mr. Heriame, in 1976 at a world health organization conference, stood up, and in a speech said, that the anti-smoking people in the world would have to, in order to succeed in their objectives, would have to turn the debate on smoking away from the smoker to convincing nonsmokers that cigarette smokers smoke was dangerous to them.
Q Did you hear him say that?
A No, I did not, but it was reported.
Q In what media, or did you get this by way of a private memo or something?
A No, this is just something I know. I don't know how I know it.
Q Now, according to the EPA report, cigarette smoke is a Class A carcinogen, meaning it causes cancer in human beings.
On what basis do you say that's not accurate?

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A Well, on several basis. First of all, the EPA, I believe, looked at 15 existing studies on the subject. It did not create any of its own research, so the EPA report was not a new piece of research. It was a study of existing reports on the subject, and as I understand it, of the 15 reports, 12 found no correlation at all between cigarette smoking or environmental tobacco smoke and disease.
The EPA chose to use three of the 15 to base its conclusions on. In and of itself, as a layman, that seems somewhat unusual, but also in an area I do know something about from marketing research techniques, the EPA also lowered its statistical confidence level that it used.
The first time it ran the data from these reports and held to the 95 percent confidence level, the data, as I understand it, suggested no relationship to disease. So for whatever reason the EPA chose to do it, for the first time in their history, they decided to lower the confidence level from 95 to 90 percent, which in statistical terms is a very significant change, and when they ran it at 90 percent confidence level, the data just edged over the threshold of

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suggesting a statistical association between environmental tobacco smoke and disease, so I think this report is really shaky on fundamental grounds.
It's also interesting, the Congressional Research Service, which is an independent part of the US Congress, reviewed this report and found it to be very suspect.
Q You are talking about statistics. Actually, that's an area where you have some knowledge because marketing research techniques are based primarily on statistics, aren't they?
A And I'm comfortable with marketing research statistics, yes. I'm not a statistician and certainly not an expert, but I can deal with them.
Q Yes, but I mean, the manner in which marketing people reach conclusions is through statistics, through epidemiology to a certain extent, if you will, correct?
A No, no.
Q Well, –
A That's just not an accurate characterization.
Q Well, give me an accurate

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characterization of the use of statistics to reach marketing conclusions.
A There are a lot of different kinds of marketers. There are classically some marketers who use statistics totally to come to their conclusions.
Q Totally?
A Totally.
Q Yes.
A Just that kind of person who won't take a step until they have a statistical base to make a decision on.
There are intuitive marketers, there are people who won't look at a statistic to come to a conclusion, and then there is a whole gradation of people in between.
Q You're in the middle?
A No. I think I tend to be a little more toward the intuitive side.
Q But you certainly are interested in statistics?
A I'm interested in them, and I'll say I'm faculed with them. I'm not an expert.
Q Where does your information come from that the EPA report is based on 15 studies?

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A From reading. I said I believe it is.
Q Were all of those American studies or were some of them foreign studies?
A I believe some of them were foreign studies.
Q Do you know how many out of the 15 were foreign?
A No, I don't.
Q Do you know how many countries were involved other than the United States?
A Not specifically.
Q Now, the Surgeon General's report of 1986, which was several years earlier than the report of the United States Environmental Protection Agency, you know, reached similar conclusions, as they also used faulty techniques?
MR. RIMM: Objection here, Stan. I think there is a problem with your question about similar conclusions. I think you need to rephrase that question so we will know what the answer means.
MR. HARDY: Object to the form.
BY MR. ROSENBLATT:
Q The 19 – I want you to assume the 1986 Surgeon General's report reached conclusions that

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secondhand smoke was dangerous, hazardous to the health of nonsmokers, so my question to you is, do you find fault with the methodology used in the 1986 Surgeon General's report?
A I am not sufficiently aware of the methodology used in that report to draw any conclusions as to its accuracy based on its methodology.
Q Wouldn't you agree that smoking has been banned on airplanes, smoking has been banned in an enormous number of governmental facilities, including the Defense Department, and the Pentagon and other governmental agencies, would you not agree that the reason smoking has been banned is because those individuals with the power to enforce bans have become convinced that secondhand smoke poses a health risk and danger to nonsmokers?
A I don't know what the people who are in position to make those decisions believe and don't believe. I live in the cigarette industry day to day, and political correctness is a factor in all this, too. I hope that I never get to the point of drawing simplistic conclusions about why people believe things or do things. This is a very

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complex subject that's got woven into our whole society and the views are so polarized and the short answer is, I don't know what their motives were and what their beliefs were in doing that.

Q You would agree, would you not, that in the medical and scientific communities, there is a consensus that exposure to secondhand smoke in a nonsmoker causes lung cancer?

A I don't know what you mean by a consensus. I would say that it is, in today's society in this country, that it is a common belief that my smoke from my cigarette could be a health hazard to you.

Q So if I asked you the direct question does the -- does passive smoke, secondhand smoke cause disease to nonsmokers, what's your answer?

A I would say that I do not know because I am not a scientist and everything else, but that I believe that the evidence, that when you strip aside all the data and that you look at it with a clear level intellectually honest point of view, I would say that the data is very shaky in that regard and that's what this lawsuit is about.

Q Which lawsuit?

A The EPA lawsuit that you referenced.

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Q The EPA conclusions have hurt your business. That's what the lawsuit is all about.

MR. HARDY: Object to the form. It's argumentative.

BY MR. ROSENBLATT:

Q Isn't that true? Isn't that true? I mean, that's the business reason for the lawsuit.

The EPA report, if believed by the American people and believed by people who ban smoking in buildings and it's certainly banned in the great majority of buildings in the city in which you work, New York, that hurts Philip Morris' business, doesn't it?

A Mr. Rosenblatt, your question is self defeating because, as you say, that this has become more and more pronounced that things have been banned, smoking banned and everything else. Last year the sales of cigarettes in the United States increased for the first time in about 12 years, so I don't believe that this lawsuit is at all about the business. I believe this lawsuit is about feeling like the truth has been twisted, like science has been manipulated, like there is a political agenda at play here where people have stated their goals up front and where one report

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drew one conclusion in the beginning and then the basis on which the data was used was changed to come to a different conclusion. I don't think this is about business at all. I think this is about honesty.

Q Oh, and the Surgeon General and the scientists employed by the EPA and the scientific advisory board of the EPA you are now saying are dishonest people and the honest people are the Philip Morris people?

A I'm not saying that. I'm saying that someone is going to have to answer why 12 of 15 reports were ignored and why a statistical confidence level was changed to be more inclusive of the data, when the first time through at their normal levels, it didn't work the way they wanted it to work or the way that they hoped it would work or the way that it worked.

Look, I don't believe that anybody who is talking about cigarettes can ignore the fact that there are a lot of agendas on this subject and these agendas play out in different ways at different times.

Q Well, Mr. Morgan, if there are agendas, the agendas of the public health community are

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obviously to protect the health of the American people, whereas the agenda of Philip Morris is to make as much money as possible, wouldn't you agree?

MR. HEIM: Object to the form.

MR. HARDY: Object to the form.

THE WITNESS: I believe I don't want to characterize the agenda of the public health community in a simple way. I think that there are myriad of agendas there and certainly it ranges from the totally altruistic to a large number of people whose livelihood is, in fact, based on maintaining the argument about cigarettes.

There are people who earn money and make their living doing that, so I'm not going to characterize that at all, except to say that, generally speaking, I am supportive of the public health agenda in this country. I believe that the public health agencies have a role to play and they should exercise their role responsibly.

Philip Morris, yes, Philip Morris does make money and we have a lot of stockholders who we try and make money for, but to merely characterize Philip Morris as making money is to do a great disservice to a company that I'm part

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of and I've loved for 30 years. We have a lot of other things going on, too. We really try to act responsibly, certainly within the law, and in my judgment, way within the law. We are very careful about what we do. I think we are responsible, and so I, just as I don't want to characterize the public health service simplistically, I really don't want to say Philip Morris is just in the business to make money.

Q As the president and CEO of Philip Morris, Inc., you would agree that your paramount responsibility is to your stockholders, correct?

A Paramount, but not only.

Q Your second responsibility on terms of a listing, would be to your customers, to your smokers, the people that smoke your product?

A Probably by some small edge over other responsibilities.

Q Okay. Now, you mentioned that last year the sale of cigarettes in the United States of America actually increased.

A The reported data was up 4/10ths of a percentage point.

Q Okay. You would agree that the great majority of new smokers are the young?

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A No, I wouldn't agree to that.

Q You think a lot of people are starting to smoke when they are 30?

A What do you mean by young?

Q Under 18.

A I don't know that as a fact.

Q Well, what do you know as a fact as to the -- in other words, we know that certain number of smokers die, we know a certain number of smokers quit smoking and the replacement smokers, would you not agree, that, generally speaking, the replacement smokers, the new smokers come from amongst the young?

A No, I really wouldn't agree with that. I believe it's factually correct that the largest incident, increase in incidence in smoking last year came from 35 to 44 year old people.

Q You have data which tells you that there are a large number of 35 year olds in that range that start to smoke for the first time?

A No, that's not what I said. I said that the incidence of smoking among the 35 to 44 year old age group increased. It does not mean they started smoking.

Q So in other words, it could be that the

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people in that group used to smoke a half a pack a day, and now they are smoking a pack a day now?
A. No, that's not correct. Whether you smoke one cigarette, two, three or two packs, that would be counted as incidence.
Q. Is cigarette smoking addictive?
A. I used to answer that question with more than a yes or no answer. Unfortunately, some of my colleagues got put into a position where it was demanded they answer that yes or no and I don't think that's a question that can be answered yes or no.
Q. You are referring to the congressional hearings?
A. Yes.
Q. And they all said no.
A. That's what they said.
Q. And after you get done with your explanation, you are going to say so, but I'm, certainly you are entitled to give your explanation.
MR. HARDY: Good, thank you.
THE WITNESS: Is that what you would like?
BY MR. ROSENBLATT:

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Q. Yes, but we both know at the end of the explanation, you will say cigarette smoking is not addictive.
MR. HEIM: Object to the form, move to strike.
THE WITNESS: I really --
BY MR. ROSENBLATT:
Q. Right?
A. I really -- I don't think you know what I'm going to say.
Q. I think I do.
MR. HARDY: Well, Mr. Rosenblatt, do you want him to answer your first question?
MR. ROSENBLATT: No, right now I want him to answer this question.
BY MR. ROSENBLATT:
Q. Isn't it true, Mr. Morgan, that when you get done with your explanation, and I'm going to certainly allow you to give your explanation because addiction is apparently a complicated subject to you, at the end of your explanation, aren't you going to tell me, and you seem like a very direct guy who's not going to avoid a direct question, and the direct question is, is cigarette smoking addictive, and I have the feeling that

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when you get done with your explanation, you are going to say no, it's not.
Isn't that true?
MR. MOSS: Object to the form.
MR. HEIM: Object to the form.
THE WITNESS: Why don't you let me answer and then you can draw the conclusion?
BY MR. ROSENBLATT:
Q. Fine.
A. The subject of cigarette addiction is, nicotine addiction or cigarette addiction is obviously all over the news and on peoples' minds. Just last night on CNN there was a show where some people were talking about it, and my view of addiction, cigarette addiction is this. If you want to place addiction as a word, a definitional word, a semantic word, if you mean by addiction pharmacologically addictive, my answer is no, it's not, and the reason that I say no, it's not, is that pharmacological addiction, as I understand it, depends on three things, none of which, neither of which, not one of the three of which cigarettes really hold up to in the real world.
The first one, again, as I understand

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it, is intoxication, and clearly to me as a smoker and in the business and knowing other people who smoke, cigarette smoking is not intoxicating. You don't smoke a cigarette and all of a sudden become incoherent, you don't become babbly, you don't get in a car and drive it crazily into a telephone pole. Cigarette smoking does not lead to intoxication. So the first of the three legs of the pharmacological definition of addiction just doesn't hold up.
The second leg of the definition involves, I forget the word, but what I call it is ever increasing dosage, and that's classic of hard drugs.
In the case of cigarettes, if you look at smokers, smokers do not increase the dosage of cigarettes. In fact, just the opposite. As people smoke for longer periods of time and as they age, the history of this industry is they go down the tar spectrum in brand selection. I started with Pall Mall, went to Marlboro and I'm now on Marlboro Lights, and I smoke Merit Ultra Lights from time to time, but the sales of this industry indicate that people go down the tar spectrum, not up.

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Furthermore, as people get older, they smoke fewer cigarettes per day on average, so that the whole dosage theory just doesn't hold up because in the real world, people don't increase their amount of smoking.
The last leg of the three legged stool of pharmacological addiction is that you need to have significant and singular withdrawal symptoms, and I also don't believe that's true with cigarettes. I believe it from my own experience, I believe it from watching my wife and I believe it from having friends. One friend as late as Saturday night said when I stopped, I just stopped, there was no big deal, I made up my mind I was going to stop and I stopped. So I think most people would tell you that while cigarettes may be difficult to give up, there are not severe withdrawal symptoms, so pharmacologically my answer is no.
If you want to now shift the discussion from a pharmacological definition over to what I'll call, for myself, a behavioral definition of addiction, then I am willing to not say no. I am willing to say, in my judgment from my own experience, that cigarettes may be behaviorally

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addictive if you use the behavior word in terms of the following characteristics; cigarettes are pleasurable. No question about it. To a smoker, cigarettes are pleasurable. Cigarettes become part of your day to day life. No question about that. You use them as something in your hand, you use them because you like the warmth of the smoke, they are part of your behavior.
I'm not at all embarrassed, afraid or intimidated to say that I believe that cigarettes become part of your life-style, and therefore, may be behaviorally addictive. The level of addiction in that case, since I'm talking about behavior, to me relates mostly to someone's mind, how they think, what they need and how they lead their lives, and in that sense, that's where I believe that cigarettes are, if they are behaviorally addictive or habit forming, they are much more like caffeine, or in my case, Gummy Bears. I love Gummy Bears and I just love them and I want Gummy Bears. I like Gummy Bears and I eat Gummy Bears and I don't like it when I don't eat my Gummy Bears, but I'm certainly not addicted to them.
Q. They don't have nicotine in them.
A. They have sugar, so I'm sorry for the

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long winded answer.
Q. I am, too, but I wanted to show you the courtesy.
A. Thank you.
Q. Letting you finish the three legged stool.
A. Thank you. You can decide your bet was right that I said no.
Q. And I'm sure the three legged stool is something that you went through in some of those sessions with the lawyers in preparing for today's deposition or did it just hit you today?
MR. HEIM: Objection to form, move to strike.
MR. HARDY: You don't have to answer that question.
MR. ROSENBLATT: You are instructing him not to answer that question?
MR. HEIM: Sure.
MR. ROSENBLATT: I'm on cross examination.
MR. HARDY: Congratulations.
MR. ROSENBLATT: Are you instructing him not to answer?
MR. HEIM: Yes.

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MR. HARDY: Yes.
BY MR. ROSENBLATT:
Q. Okay. Now, behaviorally addicted, as you used the term, does that also mean psychologically addicted?
A. We are going to start tripping into areas with words where I'm not sure I don't know the full meaning of. I said I was defining behaviorally myself.
Yeah, I believe that as I would use the word psychologically, I believe it could be psychologically habit forming, yes.
Q. Do you believe there is a category of people, a category of smokers who have decided that they, based on the scientific and medical evidence that's out there, and based on their reading, they have decided that smoking is bad for them and they want to quit, and let me finish, they made a decision they want to quit smoking, they are starting to have some symptoms, they don't feel good, they think they wish they didn't smoke and they made a decision to quit, they tried to quit and they can't.
Will you admit that there are a certain number of people, smokers who fall in that

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category?
A. No.
Q. Okay.
A. I believe that they haven't quit, but I don't believe that they can't quit.
Q. So basically any smoker who tells you that, that, you know, I tried, I just tried and I can't do it, is what, just a psychologically weak person?
A. I don't know how to characterize them. There are 50 million people in this country who can find that have quit largely on their own, predominantly on their own. Giving up cigarettes is not something that is an impossible task, and, in fact, the numbers suggest there are more people in this country today who are ex-smokers than who currently smoke, so can't is just an absolute word that I won't buy off on. They have chosen not to, whatever the apparatus is that you want to talk about, they have been unwilling or unable to come to the point in their minds where they just say I'm not going to smoke any more, but there are 50 million people who have done that.
Q. How can you be proud to represent an industry where 50 million people have tried your

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product and said I don't ever want to use this product anymore?
You are telling me 50 million people have quit using a product they tried and found it so distasteful or so unhealthy or whatever, they quit it. How could you be proud of that?
MR. HEIM: Objection to the form.
THE WITNESS: I don't see where that has anything to do with proud.
BY MR. ROSENBLATT:
Q. Think about it.
A. I am thinking about it. I think about it a lot.
Q. And what conclusion have you reached about why those 50 million people have quit smoking, people that smoked and then decided not to smoke?
A. Well, my first conclusion is that, in fact, that I'm proud of this country and I'm proud that in this country that we still hold to the principal of informed free adult choice, and the fact that 50 million people who at one time smoked and decided not to smoke, is a great testimony to several things.
First of all, the knowledge of the

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possibility that cigarettes may cause disease; secondly, the fact that we are still composed of a group of people in this country who have the ability to think through these issues and come to their own conclusions, I think it's a great testimony to our society, and frankly, I think it's a testimony to my company and my industry that we are a company that continues to provide people cigarettes who want to smoke and we don't provide or market to people cigarettes who don't want to smoke. I'm proud of that.
Q. You certainly don't claim there are any health benefits to smoking, do you?
A. I do not believe that in a classic sense there are any health benefits.
Q. Have you ever in your entire life known a smoker who, at least said to you, they wanted to quit and told you they could not quit?
A. No, I do not know of anybody who has ever told me that.
Q. Okay. Doesn't your common sense tell you that the great majority of the 50 million smokers who have quit smoking is because of their fear of what continued smoking would do to their health?

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A. That's not an easy question to answer because there are so many other factors involved and your specific question was a majority. I don't know if it's a majority. Clearly some people, but there are other factors. There is price, some people can't afford to buy cigarettes, there is family pressure where families, independent of what I would think where my kids are, you know, telling me to stop smoking or my wife's telling me to stop, or my mom is telling me to stop smoking. There are people, I think, probably also who just don't enjoy it after a while. There are people to whom the taste isn't an appealing taste, so I guess I would answer your question by saying yes, there are clearly some people who have stopped smoking because of what they perceive are the health issues involving smoking, but I can't say it's the majority.
Q. You know, in an earlier answer you referred you are proud of this country and all and you referred to an informed free adult choice.
Now, as I've listened to your testimony, you are basically knocking the Environmental Protection Agency, that they reached certain politically correct conclusions and the data

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didn't support those conclusions, and you are sitting here, April 17, 1997, when asked a very direct question does your Marlboros or do your Virginia Slims cause cancer, your answer is you don't know.

A No.

Q And my question to you is, well, if you are not informed, how can the average Joe on the street be informed about the health consequences when they hear you say maybe it does cause cancer, maybe it doesn't?

MR. HARDY: Object to the characterization. The witness didn't testify informed. You did, Mr. Rosenblatt.

BY MR. ROSENBLATT:

Q You can answer.

MR. HARDY: I move to strike the testimony by counsel.

THE WITNESS: I do not believe that what I said was literally it may or may not. I don't know. I said I believe that it is possible that cigarettes cause lung cancer. I believe is what I said.

In terms of the public being informed, I think any reasonable person, any reasonable person

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would agree that there are three common beliefs by the public about cigarettes, common beliefs, independent of whether they are correct or not correct, independent of whether they are substantiated with fact or not, there are three common beliefs that are widely held about cigarettes in this country.

Number one, is that cigarettes cause disease. People believe that.

Secondly, that cigarettes --

BY MR. ROSENBLATT:

Q You don't, but people do?

A I said I believe they possibly can cause disease. That cigarettes are addictive, I believe people believe that. I explained how I feel about it; and the third one is that I believe that everybody thinks that secondhand smoke is potentially harmful to their health. I'm not sure that a majority of the people actually believe that secondhand smoke will affect them or hurt them or cause it, but I think they are aware that there is a very large issue there. So when you talk about informed, I must say that I believe that the public is very informed on these issues. They may not be accurately informed, they may not

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understand the nuances and some of the issues and some of the debates, but the publics believes in my judgment is now and has been for a large number of years well ahead of the reality and knowledge base in the communities that ultimately decide these things.

Q What free adult choice do people have who are forced to breath air containing cigarette smoke?

A They have the choice to not breath cigarette smoke.

Q Okay. Let me show you why you are wrong. Let's say there was not a ban on smoking in an airplane. I'm a nonsmoker. I'm sitting in a given seat and people in another section of the airplane are smoking, many of them, and some of that smoke I'm taking into my body.

Where is my freedom of choice, not to take the plane?

A Your freedom of choice would come from a variety of areas, I think. One is to take a nonsmoking flight, if that's what the airlines offer. We don't control that, but if the airplanes want to offer nonsmoking flights, you can take a nonsmoking flight.

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In reverse, of course today, where do smokers go, since most flights are nonsmoking, where is the smokers freedom of choice to smoke on an airplane if they choose, but that's a trade-off that the airlines and society have chosen to make.

Another freedom of choice is to ask the smoker to not smoke, that it's bothering you, and as you may know, Philip Morris, as a company, pushes for accommodation on this issue. We do not run around insisting that smokers have a right to smoke wherever they want. We push for accommodation.

Q But --

MR. HARDY: Object, let him finish.

BY MR. ROSENBLATT:

Q Okay, because I wanted to ask a question. Go ahead and finish.

A Accommodation is, in our mind, the practical reasonable answer to this which separates smokers and nonsmokers. It provides smokers a place where they can smoke and it provides nonsmokers an environment that's, in principal, free of cigarette smoke, so there are freedoms here, and in a larger sense, this is

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something that we, as a society, are dealing with right now.

Q Well, what am I going to do, talk to 60 people on an airplane that are smoking, go over to 60 people and say please put out your cigarette? Is that a practical possibility if I'm on an international flight and 60 people or more are smoking and I'm offended by the smoke, are you suggesting that I go to all the smokers and say hey, please put you out your cigarettes? I'm going to get beat up, I'm going to get attacked.

MR. HARDY: Objection, argumentative.

BY MR. ROSENBLATT:

Q Maybe thrown out of the plane.

A Can you state the question for me?

Q Yeah. Obviously you will recognize that from this accommodation, which is a word, an abstraction, if I'm on an international flight, 60 people are smoking, I'm offended by the smoke, certainly you are not suggesting to me that I go over to all 60 smokers and say please put out your cigarette?

A Well, no, but I could suggest that you started a process by which you told the airline, who you are the customer of and who is in the

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business of serving you and its other passengers, I would suggest that you can start the process of communicating with the airline either on the flight itself or subsequently to protest the fact that their policy that allowed people to smoke was bothering you and that's the airlines' decision.

Q Now, smoking is still not banned on international flights except I think with one airline.

A Yes.

Q Is that your understanding?

A Generally.

Q Okay. Now, in the days when smoking was not banned on domestic flights as well, the choice that flight attendants had was to quit their job if they didn't want to be around cigarette smoke. They certainly weren't in a position to tell the people to put out their cigarettes.

A It would seem to me there would be another choice, which is, it really depends on how you are defining where the smoking was in the airplane, but are you assuming there was a smoking section?

Q Even if I -- yes, if I'm assuming there is a smoking section and a nonsmoking section, you

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will agree that there is no way on earth for the people in the nonsmoking section to be totally unaffected by the people smoking?
A No. I won't agree up to -- I will agree that the word totally is probably all inclusive, but my understanding from reading something a number of years ago is that the circulation systems on airplanes are such that if you are sitting, and I believe, I don't remember where I read this, it had something to do with the original FAA hearings on this subject, and what I remember is that if you are sitting in the nonsmoking section of an airplane where there is a smoking section, that the exposure you would have to cigarette smoke because of the efficacy and the effectiveness of the circulation and filtration systems in the airplanes, that you would actually be exposed to less cigarette smoke than sitting in a major league baseball park in the open air, so having said that, I believe if I believed that, I believe that there would be choice there, which is a flight attendant could certainly, if they were bothered by it and they were assigned to the smoking section, they could certainly ask their employer to be transferred or relocated or

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whatever the word is, reassigned to the nonsmoking section, so that's a possibility.
Q Why did you sue ABC, you, Philip Morris? Why did you sue ABC?
A My belief is that we sued ABC because they made a totally fallacious claim that was just so outrageously incorrect that they -- we could not sit back and let anybody believe that their allegations were true with regard to us spiking the nicotine content in cigarettes. We sued them for that. They paid us a lot of money and issued us a public apology on that saying that their report in that regard had been wrong.
MR. HARDY: Mr. Rosenblatt, we have been going an hour, and I think the tape is about up. Can we take a short break, put a new tape in and then go for about an hour before a lunch break?
MR. ROSENBLATT: What time is it now?
MR. HARDY: It's 11:15 now. We will come back in five or 10 minutes and then we will go until fifteen or twenty after 12.
MR. ROSENBLATT: Sure.
(There a recess was taken in deposition, after which the deposition continued as follows:)

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BY MR. ROSENBLATT:
Q Mr. Morgan, you think it's okay for pregnant women to smoke or would you recommend that they not smoke?
A I personally recommend that they not smoke. Again, a common sense rather than, at least what I understand, is definitive scientific kind of stuff. I think there is enough issue out there that if I were going to be a father, I probably suggest to my wife that she not smoke while she's pregnant.
Q How many nonsmokers do you think have had occasion to see a Marlboro ad or a series of them like the ad, like the outdoor motif, the cowboy motif, and as a result of being attracted to those ads, decided they would try Marlboro?
A I have no idea.
Q But certainly it's some?
A I don't know that. I do not know. In fact, I don't believe that advertising causes people to start smoking.
Q But you are not saying or are you that it's your opinion that since Marlboro began using the cowboy motif, that no people fall in that category, a nonsmoker saw the ad, decided to try a

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Marlboro.
Certainly your common sense tell you that occurs, at least, occasionally?
A Yes. I just can't quantify it.
Q Okay. The billions of cigarettes that we were talking, first we talked about the United States and worldwide, translate that into dollars in terms of the gross, first the American market and then the worldwide market.
A Today?
Q Yes. I think you mentioned what you had sold last year.
A Yes, we sold 230.8 billion units. That's roughly about 11 billion dollars, which includes the Federal excise tax.
Q And worldwide?
A Worldwide. I believe our cigarette sales worldwide would be about 25 or 26 billion dollars, which also includes a lot of excise tax in the international arena.
Q You would agree, would you not, that frequently a large successful rich corporation involved in litigation will sometimes make a purely business decision to settle a case irrespective of the merits?

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A Yes.
Q And as a matter of fact, that's one of the things that's made the tobacco industry unique over the years, is that that position of the tobacco industry has always historically been that in terms of lawsuits by smokers or secondhand smoke, the tobacco industry has never voluntarily settled, correct?
A I believe that's true.
Q Do you support that position?
A Yes.
Q Do you think it's all right for employees working in a nursery to smoke in the presence of infants?
A Not a greenhouse nursery.
Q No, a nursery with children.
A Is it all right? Well, I suppose if it's legal, it's all right, but I, again, as a common sense issue, given the state of the current debate on cigarettes and on some of the statistical information that seems to be around, I would say that it would be more reasonable for them not to smoke in the presence of those children and ideally they would have a area where they can go smoke that wasn't in the presence of

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children.
Q Who is Jacob Sullum?
A I have an idea.
Q S-u-l-l-u-m?
A I don't know.
Q Are you familiar with a publication called Forbes Media Critic?
A I don't read it, but I'm familiar with the title.
Q Are you familiar with a magazine called Reason Magazine?
A No.
Q How many discount brands does Philip Morris have?
A I don't mean to be technical, when you say brands, do you mean brand names or packings?
Q Brand names.
A That's a tough question, too, because of the definition. We have, I'd say we have four brands that are identifiable brand names that are sort of marketed by us, but we also manufacture a number of private label discount brands for some of the retail customers and wholesale customers, so it's four.
Q How many of those about packings?

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A Brands. Apples to apples, brands to brands, probably about nine, 10 or 11.
Q Now, you had mentioned the word packings. Is that a separate category?
A Well, if you take our brand, like our leading discount brand Basic, Basic is a brand, but Basic comes in menthol, regular, box, soft pack, hundreds, lights, ultra lights, full flavor, so there may be 12 or 13 individual styles of the Basic brand.
Q How many styles are there of the Marlboro brand?
A Oh, boy. I think 19 or 20.
Q Now, is it fair to say the reason that there are 19 or 20, so many, is because of your marketing research has told you there is a market for each one of those different kinds of packings?
A Well, it's not our market research in a sense, it's just looking at what consumers are demonstrating a preference for and then making sure that we have a Marlboro that fits into that category.
Q In terms of Philip Morris as opposed to the industry, generally, what is your number two brand?

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A We have several brands that are right around the same size. Basic would be our number two brand, and then after that, Benson and Hedges, Merit and Virginia Slims sort of cluster as the next three brands.
Q In the Virginia Slims advertising, they use the phrase it's a woman's thing.
What is that intended to convey, smoke?
A The phrase is not that. The phrase is it's a woman thing, not a woman's thing.
Q Okay. I stand corrected. It's a woman thing singular.
A Yes.
Q Okay. So what does that convey?...
A That conveys that Virginia Slims is a brand that is designed for women, which is what it's been since it was introduced in 1957.
Q What do your statistics tell you on that as a practical matter, almost no men smoke Virginia Slims?
A Almost no men smoke Virginia Slims.
Q So in that sense you achieved your purpose?
A Correct.
Q Do you know, of the women who smoke,

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what percentage smoke Virginia Slims?
A Let me calculate it. Virginia Slims has about a two and a half percentage share of the total market, and roughly half of cigarette smokers, a little less than half of cigarette smokers are women, so arguably, plus or minus, about five percent of women would smoke Virginia Slims.
Q Do you know Bennett Lebow?
A No, I do not.
Q Have you ever spoken to him?
A No, I have not.
Q Are you upset by the position he's taken publicly where he now has agreed to put on his products that cigarette smoking causes cancer, cigarette smoking is addictive?
A What do you mean by upset?
Q The word upset has a pretty common meaning.
As a businessman, as the president and CEO, the heretofore totally unified front of the tobacco companies has obviously never been to— admit to those things. He's admitting to them.
A I don't lose any sleep over it because while I don't know Mr. Lebow's motives, his

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business situation is such that with barely one percent of the US cigarette industry, and the announcement by himself that he maybe on the verge of bankruptcy, I believe that Mr. Lebow did what he did for Mr. Lebow's sake and I don't find it to be terribly upsetting.
Q Do you think that what he has done is going to impact your company in any way in terms of your attitude toward making those admissions or in terms of your attitude toward settlement?
A I can't speculate on that. This is a very complex issue and it would not be easy for me to speculate at all on what we would or would not do under certain circumstances.
Q In your day to day work as president and CEO, how much contact do you have with Jeffery Bible? Is it a daily contact?
A No, no.
Q So how often?
A It's erratic. It could be — I could be with him in a meeting for two hours one day and there have been literally a couple of weeks at a time where I haven't talked to him.
Q Where is his office in relation to yours?

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A His office is 13 floors higher and about 20 feet to the east.
Q Same building?
A Same building.
Q At what address?
A 120 Park Avenue.
Q Is he your boss?
A He was. He is now, was, is now and will be up until May 1st.
Q What happens May 1st?
A On May 1st, Philip Morris changed its structure and appointed a chief operating officer, William Webb, who I will report to at that time.
Q And what will be Bible's position in that loop, if any?
A Mr. Webb will report to Mr. Bible.
Q And Mr. Webb comes from where?
A He had been the president and chief executive officer of Philip Morris International, which is the international, international cigarette business.
Q What do you know about the Council for Tobacco Research?
A I know there is a Council for Tobacco Research. I know that since December of '94 when

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I became president of Philip Morris, USA, I'm on the board of Council for Tobacco Research.
Q How long has the Council for Tobacco Research been around?
A I don't know.
Q What is its mission?
A Its mission, as I understand it and now pertains in it, is to serve as a body which brings a group of independent scientists together to evaluate, giving grants to other scientists to do scientific research on a whole variety of issues which are either tightly, or in my judgment, as I understand it, somewhat loosely tied to a lot of the issues that surround the cigarette industry, and the CTR is the funding mechanism by which the tobacco companies put money into CTR and then allow independent, I think it's called the scientific advisory board, to make the judgment as to what research proposals should get funding.
Q What kind of research are they focusing in on the last 10 years?
A It's sort of a double qualification.
First, I'm a layman; and secondly, I've only been involved for two years and have had — seen a couple of the kinds of pieces of research

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Some generic research, I believe that they do some cancer research in the area of cancer, I did see a presentation in the area of Alzheimer's disease that a doctor at Columbia had done.

Q And was that presentation essentially involved with what are the causes of Alzheimer's disease or was it a research project to see whether or not cigarette smoking had any relationship to Alzheimer's?

A Well, allow me to be somewhat loose in my interpretation of it. This presentation was actually at the last annual meeting of the board of directors and it was a doctor at Columbia who's done a lot of research, I guess, over the years on Alzheimer's, and she was showing the board, as part of the agenda, she was showing the board the work that she had done which explained, at least in her mind, why Alzheimer's disease was less prevalent among people who smoked.

Q So your understanding is that if you want to not get Alzheimer's disease, you should smoke?

A No, that's not my understanding. That's what I took from this one doctor. I was in the car yesterday and heard a report on the news out

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of Belgium that a doctor had done some research that showed exactly the opposite finding.

Q The opposite finding being that cigarette smoking will cause Alzheimer's?

A That's what the radio report said, that they found an increased prevalence of Alzheimer's among people who smoked, so here we have two conflicting pieces of research.

Q And how can you, as a layman, decide which is correct?

A I can't lay a glove on that.

Q Okay. Does Philip Morris have an employee handbook, and it's not necessarily that it's called that, but a handbook, a pamphlet, a memorandum which goes to employees covering a variety of issues?

A I don't know if you call it a handbook, but we have a, like a little box that has in it about seven or eight pamphlets that talk about fringe benefits, like the medical plan, the dental plan, the life insurance plan, a profit sharing plan, retirement plan. It all has to do with employee benefits, so I don't know if that's a handbook, but all the employees are given that.

Q Have you ever seen a Philip Morris

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document or memorandum which goes to employees which addresses the subject of how employees should respond when they are asked adversarial questions, such as how can you work in a business wherein your product causes cancer, that kind of thing?

A No, I've never seen a book like that. To my knowledge, I don't believe we have one. It would be very counter culture to Philip Morris to do that.

Q Are Philip Morris employees free to appear in a public forum, go on a radio program, a television program to discuss these issues or to debate the issues relating to smoking and health?

A I believe so.

Q No prohibition as far as you know?

A Not that I'm aware of.

Q What was the incidence of lung cancer in America before cigarette smoking became popular?

A I don't know the statistic.

Q But do you know, without knowing the statistic, without knowing the specific number, do you know that it was minuscule?

A Well, I know again what I've read over the years. As I said, I don't read technical

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journals. I read as much as I can read that I would understand.

I know it's reported as being small, but I also remember a very intelligently written article that said that lung cancer was likely misdiagnosed many years ago before people understood what it was and that basically if a reasonably significant number of cases that were diagnosed as tuberculosis, were, in fact, lung cancer, then the incidence of lung cancer may have been a lot higher than people thought it was back in what I remember to be the 1910s, 20s kind of things.

Q In the 1910s and 20s, the prevailing view was that lung cancer was almost an unknown disease?

A Based on the knowledge of the disease at that time and the ability to diagnose it, yeah.

Q Okay. Is there any medical or scientific organization in America unconnected to the tobacco industry who takes the position that cause is unproven as it relates to cigarette smoking and disease?

A I would like to not answer that question yes or no because I don't know the answer, but I

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direct you, I think, I feel very comfortable directing you to Dr. Kathy Ellis who is our senior vice-president of R and D, and I'm sure she can give you a really accurate answer on it.

Q But as you sit here today, you don't know the answer?

A I don't know that there are and I don't know that there are not.

Q Okay. Who insures Philip Morris in this kind of a lawsuit, the Broin class action and the Engle class action? What insurance company?

A I don't know the answer to that. I think we may be self-insured. I'm not sure about that. I'm not aware that there is an insurance company that insures us.

Q Is it fair to say that the lawyers who represent Philip Morris in these two cases have been hired by Philip Morris as opposed to any insurance company hiring them, as far as you know?

A I don't know the answer to that.

Q Well, what input have you had in terms of selecting this particular law firm rather than that particular law firm? Zero.

Who from Philip Morris made that decision?

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A The general counsel and his staff.

Q Who is the general counsel?

A Murray Bring.

Q He works out of 120 as well?

A Yes, he does.

Q How many floors or do you have the whole building?

A We have the whole building.

Q How many floors in that building?

A 25 small ones.

Q How many people to a floor? Let's see if your definition of small --

A All right.

Q The Concord building I know is small.

A I live with this as a constant day to day problem, so I'm somewhat familiar with it.

Q Twenty-six small floors.

A Twenty-six small floors on the -- on a normal floor, there would be about 65 people.

Q That isn't a small floor.

A But I have a floor in the Philip Morris USA business that actually has 139 people sort of living on top of each other.

Q What is the smoking policy in that building?

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A The smoking policy at 120 Park is you can smoke anywhere because the building was exempted by New York City from the New York City smoking regulations because it was the headquarters of a cigarette company.

Having said that, I will tell you that we do practice accommodation in that building, and if we are in a meeting or something and someone says I would prefer if nobody would smoke at this meeting, we don't smoke.

Q Who in their right mind would say that?

A A number of people would say it. It's actually happened.

Q Not a person without tenure.

A People without tenure and who aren't so big. I mean, we all know that you don't have to be so big to have a lot of guts.

Q But if this particular building -- what is the policy with other office buildings in New York City?

A Basically in New York City, you are not allowed to smoke except in designated smoking areas in office buildings.

Q In any office building?

A I believe that's the case.

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Q Is Dr. Elliot -- by the way, what is her Ph.D. in or is she a medical doctor?

A No, she's not a medical doctor. She's very well educated. I'm not sure exactly what field her Ph.D. is in, but she's highly educated and very experienced in, as actually a lot of our people in R and D.

Q R and D being research and development?

A Yes.

Q Is she the top science person at Philip Morris?

A Yes, she would be.

Q What was Marlboro Friday and how did it come about?

A Ready for another Atari story?

Q Sure.

A Marlboro --

Q Shorter I hope.

A Okay. Just tell me when to speed it up or shut it down.

Q Then your lawyers give me a hard time if I tell you.

MR. RUDE: We will say shorter, too.

THE WITNESS: Marlboro Friday was or is the name that has been given to a day in April of

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1993. I think April 3rd. I don't actually -- remember, but I think it was April 3rd, and it was a day where Philip Morris announced on Marlboro we were going to start a national price promotion taking the price of Marlboro down 20 cents a pack at all retail stores.

BY MR. ROSENBLATT:

Q And you did it.

A We did it.

Q So where is the rest of the Atari story?

A Okay. Here we go. Leading into Marlboro Friday, and let me say carefully up front, a lot of the story I'm going to tell you happens during the 10 years I was not in the Philip Morris cigarette business. I left in '83, I came back in '88, so I wasn't with Philip Morris from '83 to '88, and when I came back in '88, basically for the next five years until I came back to the Philip Morris domestic cigarette business, I worked in corporate, so a lot of what I'm telling you is more as a student and observer and not firsthand experience.

Starting in the mid 1980s, a part of the cigarette industry started to grow, which was what's called the discount category. Cigarettes

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of lower quality and lower price, and during the mid and late '80's, the cigarette industry witnessed a fairly sharp run up in the growth of the discount category and Philip Morris participated in that. It had a variety of discount brands.

In the early '90's, all of a sudden Marlboro started to lose sales to the discount brands. The discount brands demographically tended to be older female smokers, for whatever reason, and Marlboro, which has a profile more male than female and more 25 to 35 and older, sort of held on for a long time in the face of this growth of the discount category, and in the early '90's, Marlboro started to feel the impact of the discount category, which at that point was starting to represent, don't hold me to it, I'm say about 25 percent of the industry.

Q The discount brands?

A The discount brands of which we had some and we were aggressively participating in that category.

In the period leading up to Marlboro Friday, for a rather extended period of time, we sort of did a strategic reevaluation of do we

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really want to be in the discount business. I mean, there is no loyalty in discount brands and people are buying them strictly because of price, and the data demonstrated that very clearly that if this pack were a $1.39 today, I would buy it, and if some other brand were $1.31 tomorrow, I would buy that, and people were zigging and zagging just around brands and it really, it really was, for me, even though I wasn't in the business, I saw it happening, it was really a threat to one of my core beliefs about cigarette brands which this is a business about consistency, and when you get people starting to zig and zag on brands and you break the loyalty to a brand, there is real trouble ahead, so there was a lot of discussion about what to do about the growth of the discount brands, and by the spring of 1993, right ahead of Marlboro Friday, the discount category had actually reached 39 percent of the US industry. As I said, discount brands are lower quality, they are lower priced and therefore they are less profitable. Discount brands are significantly less profitable than what I call premium or full margin brands.

So we decided in April 3rd, Marlboro

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Friday, the spring of '93, we decided to lower the price of Marlboro to stop Marlboro's vulnerability to discount brands. We did it. We executed that promotional program for about four months into August and then we lowered the list price of Marlboro by 20 cents a pack to make it permanent and basically national, if you will.

We also, at that time, lowered the price of our other premium brands the same amount we lowered Marlboro. From the period April to August, if that's the time frame, our other premium brands actually were still at the higher price and then they were getting really hurt because not only were the discount lower brands lower priced, but now Marlboro was lower price, so we lowered them in August. So that's sort of the Marlboro Friday scenario.

Q So in August of 1993, all your premium brands were reduced by 20 cents per pack?

A Yeah, July or August. I forget. A couple of months time frame.

Q And has that remained in place to this day?

A Well, that price decrease remained in effect to this day, but there have been several

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price increases since then, so it's chicken egg. I mean, we didn't change our minds about lowering the price on Marlboro Friday, but we have, because of costs and inflation, come back and raised the price several times since then.

Q Historically, with respect to premium brands, Philip Morris generally raises the price what, twice a year?

A You would have to talk about the time frame because there is no continuing pattern on that. If you gave me a time frame, I could answer that.

Q 1980 to now.

A From 1983 or 4 until 1993, roughly 10 year period, Philip Morris raised its prices two to three times a year.

Since 1993, we raised prices less than once a year.

Q Why?

A Because there is, in a business sense, there is a elasticity related to price and we believe that we don't want to price our cigarettes ahead of inflation.

Q When during the approximately 10 year time frame that you were raising the prices two or

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three times a year, what was each raise, how many cents?

A Gee, again, I wasn't there, but if inflation during that period of time were X, I would say that the price increases were two, two and a half times X annualized in aggregate.

Q Let's talk about what the point you made about discount brands, the lack of loyalty, price being the whole ball game to the consumer, correct?

A Uh-huh. Not the whole ball game, but a certainly more significant ball game than with premium brands.

Q Okay. With premium brands, the history of the tobacco industry has been some brand loyalty.

A Yes.

Q Okay. And that was very important and highly cultivated. I mean, that's a big positive, brand loyalty?

A From a business standpoint, that's a huge positive. I believe that cigarettes rank in one of the top three categories for people being loyal to the brand that they choose to use.

Q Would you not agree that when you look

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at the discount market, that what it says to an outside observer is, that if the price is right, it doesn't matter what I'm smoking, as long as I get that hit of nicotine?

A No, I don't agree with that at all.

Q Well, what do you make of it? People are just, they will buy this today if it's a nickel cheaper and they will buy that tomorrow if it's a nickel cheaper.

A But the end of the story is that in 1993, on Marlboro Friday when we lowered the price, we lowered the price, Marlboro had a 21 percent share of industry and was losing share at the rate of over two share points a year. That was the annualized rate. We lowered the price 20 cents. We didn't lower it down to the discount brands. That's an important point. We did not say we are going to price Marlboro the same as discount brands.

What we did was, we said the gap between Marlboro and the discount brands is too large, we want to narrow the gap and we narrowed the gap to a 40 percent gap where Marlboro was 40 percent more expensive than discount brands, so we didn't match it, we just narrowed the gap, and from that

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day on, Marlboro has grown to today and has grown, as I said earlier, from a 21 share and declining in 1993, to a 33.5 share today.

Q And do you attribute all of that or most of that to the price reduction?

A The shift in that momentum I attribute to the price reduction and closing the gap and making the value of Marlboro, the consumers see in Marlboro through its product, its packaging, its consistency of its marketing, its taste, all of the components of this integrated Marlboro I talked about were now put back in line with the consumers value perception, not unlike why some people will buy a Chevrolet and other people will buy a Jeep and other people will spend more than that on other car. It's all the perception of value in the brand that I choose relative to the cost that I'm going -- the money I'm going to spend to get it.

Q Retail today, what is the brand of Philip Morris costs the most?

A Well, all the premium brands would cost.

Q The most?

A The same. Actually, maybe English Ovals. Again, that's outlier brand.

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Q Forget about that. What is the price today?

A Well, I'm going to deal with it this way. The price ranges on Marlboro nationally from as low as, I'm going to say, I actually saw Marlboro in Atlanta two weeks ago for $1.39 a pack, but there are also places where Marlboro costs $2.75 a pack, and what determines that is the high level of state excise taxes.

We sell our product and collect a huge amount of money for the Federal government in our sales price and we pay it right to the Federal government, billions of dollars a year. When the cigarettes go to distributors, wholesalers, they then affix state taxation and the state taxes range from as low as two and three cents a pack in some states, up to 85 and 95 cents in others, and that's why on a state by state basis, you see these wide variations in price.

Nationally, if you sort of sales weight and aggregate all the sales of Marlboro in all the tax jurisdictions, today Marlboro's price averages $2.00 a pack.

Sorry for the long answer.

Q So if west down and I left this building

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and looked for the first store and went in and bought a Marlboro, what would it cost me in New York?

A In New York, probably $2.45, $2.55.

Q Do you get all your cigarettes free?

A I get a carton a week free. In the New York office, we will give our employees a carton a week free.

Q Every employee?

A Every employee.

Q Irrespective of level?

A Every employee.

Q Gets a carton a week free?

A Yes, that's one of our benefit programs, and but I do buy cigarettes also because I like to spend a lot of time out at retail seeing what is going on. If you go into a retailer store, you make the retailer most happy by buying a pack of something and giving them your money, so I do buy cigarettes, but basically I get them for free, yes.

Q A carton has how many packs?

A A carton has 10 packs, 20 cigarettes to a pack, 200 cigarettes to a carton.

Q Who came up with the new Benson and

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Hedges ad with the people outside the airplane on the wings, outside buildings?
A You really want to know?
Q Yes.
A Me.
Q Where did you get that idea from? You are a creative marketer.
A Thank you so much. I'm embarrassed to say it because, of course, you like to, the organization did it. That was actually my idea. It's one of the few ideas that actually was sort of put it up and say I did it.
Q Did it help sales?
A No, it didn't. We just changed the campaign. Actually, that's why I'm president. I killed it because it didn't work.
Are you interested in it?
Q Sure.
A The theory of it in my mind goes as follows.
Q The oppressed smoker?
A The oppressed smoker, and we as a company, as a company, we are not acknowledging that we understand what smokers are going through. Our advertising is not addressing that.

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Benson and Hedges has been a brand which, ever since it went off television back in 1971, has really struggled badly to find what I would call an effective advertising home. We must have changed campaigns on that brand 15 times, and so I came up with this idea that said look, why don't we, at least empathically, say to smokers we understand what you are going through, and let's do it in a humorous way because Benson and Hedges always used humor in its advertising. So we created the campaign and it got a lot of attention, it got a ton of attention, a lot of press coverage, reasonably high awareness by smokers, but frankly, it never moved the needle on sales, and what I realized about it and what we came to realize was that it sold the issue very well. I mean, it really did explain smokers short of chuckle and laugh and write angry letters to us boy you are right.
Q Buy someone else's brand?
A But they never quite tied it to Benson and Hedges, so that it was a marketing person's nightmare. Great idea that didn't tie to the brand, so actually, I guess because I'm president, I started about six months ahead of anybody else

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starting to say are we sure this is working. I mean, I don't see that sales really seem to be responding to this. People say yeah, we are comfortable, it's a great idea. I said I really wanted to be sure that it's working. I mean, let's make sure. Let's not say it's working because it's my idea. We wouldn't do that. It took me six months to get people to agree that it wasn't working. I knew it well before it sort of became organizationally acceptable that the prez's idea was not working, and then I led the development of saying we have to get a new idea, and actually, about two weeks ago we came out with a new campaign and there was coverage of it in Ad Age this week.
Q What is the new campaign?
A The new campaign is sort of graphically fun. It is showing a cigarette as a human being, so that the first ad shows a swing on a porch, a wooden swing on sort of a picket fence porch, and it has two Benson and Hedges curled as if they are sitting on the couch and it says rest and relaxation, Benson and Hedges, so it's talking about smoking moments. Moments that people, smokers understand are pleasurable smoking moments

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and saying Benson and Hedges, the use of the and. Benson and Hedges, rest and relaxation, coffee and cigarettes, etcetera. We will see.
Based on the history of Benson and Hedges, we will probably change the campaign in another six months because we sure haven't found the answer to that.
Q How long did the campaign that was your brain child, how long did that last?
A Longer than it should, but about two years.
Q I would imagine it was very expensive campaign because as I looked at the billboards, it would seem to me the Benson and Hedges billboards were more expensive because of the three dimensional kind of view of it.
A Actually you may have, if you saw three dimensional, you saw one of about five in the whole United States. We were just playing around with that.
Q What did Philip Morris spend on all its brands last year for advertising?
A Around 200 million dollars.
Q Has that been a pretty consistent figure for the last five years or so?

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A Yeah.
Q The banning of cigarette advertising on radio and television hasn't hurt Philip Morris, has it?
A The statistics of our performance would indicate that it hasn't hurt Philip Morris at all.
Q You will recall, will you not, that when it was banned from radio and television, the people who were anti smoking thought that was a great victory for them.
A I don't know what they thought, actually.
Q Well, I mean --
A There were a number of people who didn't like that at all who were severe critics of the industry.
Q Well, who pushed for that ban?
It certainly wasn't the tobacco companies.
A Actually, the tobacco companies agreed to it. I don't remember. I don't remember sort of the forces that pushed -- the Federal Communications Commission was involved, I think the Federal Trade Commission, Congress was clearly

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involved. A large number of the anti cigarette people were involved. We were involved.
Q But, I mean, there was had a trade-off.
What did Philip Morris and the tobacco industry get for agreeing to the ban?
A Well, that I'm not sure I would characterize it as what we got. When I said not all the anti cigarette people were happy about it, I'm sure you recall or at least know that the Federal Communications Commission back in the late '60's had ruled that for every three cigarette commercials, the networks had to run one anti smoking commercial, and when cigarette commercials went off television and radio, so largely did the anti smoking commercials and that had a lot of anti smoking people I think reasonably upset, if I remember it right.
Q And also a decision had been made by the Federal Communications Commission that the equal time provision no longer applied if an ad was carried knocking cigarettes, they didn't have to give the tobacco industry equal time because they had concluded that there was no other side to the controversy, isn't that correct, and isn't that one of the reasons causing the tobacco industry to

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agree to the banning of advertising on radio and television?
A I don't think so.
Q Are you familiar with that equal time provision? I mean, is it accurate what I've said, that at or about the time when cigarette advertising was banned on radio and television, the equal time provision no longer applied where if you had a commercial knocking tobacco, that meant that the tobacco companies got equal time to rebut it?
A I must not be understanding your statement or your question because as you are talking, I'm thinking of it in the reverse. The actual reverse of what you are saying, which is, I don't recall that there was ever an issue that the tobacco industry should get equal time against anti smoking commercials.
What I recall is the reverse, that the Federal Communications Commission said that in view of the cigarette commercials, that anti smoking should get equal time which they defined as one commercial for every three cigarette commercials, so you and I are just flip-flopping in the way we are looking at it.

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Q Okay. If you are correct in your memory, then obviously from a business standpoint, that was a good trade-off.
A Well, --
Q To agree not to advertise on radio and television anymore so that you would not have American Cancer Society commercials in response to all your advertising.
A I know you said something. I don't know what the question is.
Q That was a good reason to agree to the ban on advertising Philip Morris products on radio and television, wasn't it?
A No.
Q Then why did you agree?
A First let me tell you that I don't think it was a good deal. I was the Marlboro manager at that time and I must tell you that I didn't think that any deal was a good deal that took Marlboro commercials off the air, and I managed that transition of Marlboro off television and radio.
Q You had something to do with the music?
A I managed the music, yeah.
Q Did you select it?
A No, I didn't select it.

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Q That was from the Magnificent Seven movie?
A Yes, it was. It was the theme song from the Magnificent Seven.
Q It was great music.
A I think so.
Q Okay.
A So I personally didn't think it was a good deal at all. Why did we do it? As I remember, we did it, and understand again, I was a brand manager, I was not making these kinds of decisions.
Q You were the Marlboro brand manager.
A Marlboro brand manager. I was not making these kinds of policy decisions. Why we did it, I think was that we accepted the fact that television advertising intruded on more young people than was appropriate, given the issues surrounding cigarettes at that time. It was not done because industry sales were soft and we were feeling the hurt of them one out of three anti smoking commercials. I think it was done in an effort to be responsible and to respond to the issues that were prevalent at that time.
Q Do you have any statistics or does

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Philip Morris make any studies, for example, my own city of Miami, obviously I see a lot of Marlboro billboards.
Do you have any statistics on a given highway how many kids see that sign --
A No.
Q -- in a given day?
A No. We have statistics that are audited traffic counts, but no, we don't know the composition of who are in those vehicles other than to assume that there is someone of legal age driving it.
Q Can you give me a rough estimate as the percentage of Philip Morris billboards that are on highways as opposed to within city limits?
A A vast percentage.
Q A great majority are on highways?
A Yes. I feel comfortable saying that.
Q And obviously you have no way of knowing the composition of who's actually seeing those signs other than in general numbers?
A Correct.
Q Okay.
MR. HARDY: Mr. Rosenblatt, I would like to break sometime within the next five minutes. I

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don't know what is convenient for you in terms of topics.
MR. ROSENBLATT: You mean the lunch break?
MR. HARDY: Yeah, sometime in the next five minutes.
MR. ROSENBLATT: Okay. Fine. Let's break.
MR. HARDY: Do you want to do it now?
MR. ROSENBLATT: Sure.
(Lunch recess is taken)
BY MR. ROSENBLATT:
Q Did you ever have occasion to work with Bill Campbell?
A Yes, I did.
Q Okay. And tell us what that relationship was.
A In 19 -- in like March of 1993, I moved from my job in corporate Philip Morris back into the domestic tobacco business and Bill Campbell was president of Philip Morris, USA at that point and I came back as head of marketing.
Q Do you know why Bill Campbell left the company?
A I don't know specifically. I know that

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he indicated to me at one point that he was going --
to retire.
Q Do you know if he did, in fact, retire? Is he employed elsewhere?
A I believe that he retired and he is employed. Yes, he runs the worldwide retail banking operation or branch operation for CitiCorp.
Q He's in New York?
A Yes.
Q He retired and then he decided to take that job?
A He retired from Philip Morris.
Q Okay. Did he go, as far as you know, directly from Philip Morris to the banking job or was there a substantial interim?
A I don't believe there was a substantial interim. There may have been a month or two.
As I recall, he joined CitiCorp as a consultant first and then they extended the job offer to him.
Q Basically what were your ---
responsibilities during the time frame you were with, as you describe it, corporate Philip Morris?
A Okay. I rejoined the company in Labor

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Day of 1988, and I went into the corporate planning department. I was stationed actually, although I worked for corporate. I was stationed up in Rye brook, New York, in what was then the general foods building, and my job was titled marketing planning. It was really a marketing synergies job, synergies trying to find efficiencies and opportunities for cooperation and coordination among all our businesses in the marketing area. I did that for. I actually don't remember how long I did that for, and Philip Morris acquired Kraft during that period of time and I was asked to join the staff of Kraft General Foods reporting to the chairman at that time doing marketing planning for Kraft General Foods, which I did for about a year.

I then was actually put in Philip Morris, USA for about six or seven months in a planning job back in the domestic tobacco business in 1990, and then the head of Philip Morris, USA who I was working for, who had been the head of planning at corporate when I rejoined the company, was removed from that job and they put me out of Philip Morris, USA back into corporate where I did corporate planning again.

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For about the next year I spent almost all my time in Milwaukee at the Miller Brewery, which is another Philip Morris subsidiary, and did a lot of marketing consulting, sort of that old story I'm a consultant, I'm here to help you, for Miller Brewing, and then I was moved back to Philip Morris, USA in the spring of '93.

Q So you were out of the tobacco business for about 10 years?

A Yeah, yeah.

Q Do you have any data or statistics on how many Marlboro smokers switched to another brand in any given year?

A Yes, we do.

Q And what does that data reflect?

A Give me a couple of percentage points on this, but it basically says that four or five percent of Marlboro smokers switched to another brand.

Q And so what is your data on smokers of other brands switching to Marlboro?

A It's a lot higher.

Q What percentage do you think?

A Oh, it depends on the brand, but Marlboro has a very significant influx of existing

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smokers from competitive brands. That's why the business is so competitive and why we focus so much on brand marketing.

Q Do you have any data on the number of people or the percentage of people who are nonsmokers become smokers and choose as their first brand Marlboro?

A Not that I'm aware of, no.

Q What is the Center For Indoor Air Research?

A Center For Indoor Air Research I believe is an organization -- oh, I'm sorry. Center For Indoor Air Research.

Center For Indoor Air Research is an organization that studies the quality of air in enclosed environments.

Q What has been your dealings with that outfit, if any?

A Well, actually about a year ago I was put on the board of that organization and I've been to one meeting and I'm aware that they study, I think both initiate studies, but also I am aware that they study other studies that are being done around the world on indoor air research, indoor air quality, I'm sorry.

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Q What is or what was the Tobacco Industry Research Committee?

A That I'm not aware of

Q Okay. Have you read a book by Philip Hilts called Smoke Screen?

A No, I've not.

Q Do you know who Philip Hilts is?

A Yes, I do.

Q Who?

A Philip Hilts was a reporter for the New York Times who wrote that book, which I've not read.

Q Have you read a book by Stanton Glantz, Dr. Stanton Glantz called The Cigarette Papers?

A No, I have not.

Q Have you read a book called Ashes to Ashes?

A Yes, I have.

Q What do you think of that book? You are in there.

A I am in there, yes, I am.

Q What do you think of that book, in general?

A In general, I think it's an exceptionally long book. I found it to be a very

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interesting book because I could do two things with it. One was learn about the tobacco industry before I got into it, which some parts I found really fascinating, and I also had a chance to read someone's perspective of the tobacco industry I knew from 1963 on.

MR. HARDT: Mr. Rosenblatt, I have a message here that I believe is from Mr. Morgan's wife. It says it's not an emergency, but his wife would like him to call the next break.

Why don't we just stay in place and let him go make the call now.

MR. ROSENBLATT: Sure.

THE WITNESS: Thank you.

(Thereupon a recess was taken in deposition, after which the deposition continued as follows:)

BY MR. ROSENBLATT:

Q We were talking about the book Ashes to Ashes.

The various times that you are mentioned in the book, is it accurate what's said about you?

A I would like to think so. There are a lot of flattering things said.

Q Right.

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A The things that I am personally aware of that were mentioned in the book that I have firsthand knowledge of were reasonably fairly accurate. I thought he did a good job of capturing the culture of Philip Morris, the spirit of Philip Morris, he did a good job I think of characterizing the people I knew well enough to say that's an accurate characterization.

I thought it was a very thoroughly researched book that was well written, but a little long.

Q He interviewed you several times?

A Once. He interviewed me for an extended period one time and I think he had one follow-up interview.

Q You knew the author, correct?

A I didn't know him. He interviewed me.

Q But before that, meeting him in connection with the book, you had not known him?

A No, I don't think so.

Q Okay. If you came across a book, this is a hypothetical question, which said that you were a liar, would you just take that and do nothing about it or would you take some action?

MR. HETM: Objection.

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MR. MOSS: Object to the form.
THE WITNESS: I personally would want to do something about that.
BY MR. ROSENBLATT:
Q That's a natural reaction, isn't it? If you take the position I'm not a liar and I didn't lie about what this guy says and he is calling me very directly a liar, you would do something about it?
MR. HEEM: Objection. Again, it's a hypothetical.
THE WITNESS: In the context of your question, I would do something. What I would do, of course I don't know, and what my success would be I don't know, and the range of possibilities of what I might do seems endless, but I personally would not sit back and let someone call me a liar if I knew I were not lying and not take some steps to communicate that I disagreed with him.
BY MR. ROSENBLATT:
Q And certainly within the range of actions you might take, would be you would sue the person who called you a liar?
A I probably wouldn't sue, but that's certainly an option that's available.

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Q When you communicate with people at Philip Morris, you give an order that you want carried out, do you do that by memo? How do you do it?
A Generally verbally.
Q But do you have occasion on a fairly frequent basis to put your instructions or your wishes or your thoughts in writing to share with fellow employees?
A No, I would say that's the exception rather than the rule.
Q But you have done some memos since your presidency, obviously.
A I've done some memos, yes.
Q Okay. Where are those memos?
A They would --
Q Who has them? Your secretary?
A They would be in my secretary's file.
Q Did you read Bill Campbell's deposition that was taken in this case?
A No, I did not.
Q Has Philip Morris ever sued the FDA?
A Yes, it has.
Q There is a lawsuit pending right now against the FDA, isn't there?

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A Yes, there is.
Q Okay. And that has to do with they want to regulate the tobacco industry, you don't want them to regulate the tobacco industry, put in simple terms.
A No, I wouldn't characterize that as the simplest terms.
Q What is the lawsuit all about?
A They want to regulate the tobacco industry and the tobacco industry feels that they don't have the right to do so.
Q They don't have the right to do so based on what?
A Based on the FDA Charter, based on congressional actions over the last 40 years and whether Congress intends to let the FDA regulate the tobacco industry.
Q The tobacco industry never has been regulated by any branch of government or any governmental agency, has it?
A Oh, that's totally an incorrect... statement.
Q Who's regulating the tobacco industry?
A Federal Trade Commission, Bureau of Alcohol, Tobacco and Firearms, Department of

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Health and Human Services, the Federal Communications Commission, the Securities and Exchange Commission and the Treasury Department, the IRS, it's basic.
Q Well, what is your definition of regulation?
A My definition of regulation is promulgating a series of rules and conditions under which you have to operate under.
Q On February 18th, it was reported on NBC television and USA Today that dozens of members of Congress spent the weekend at a lavish golf resort in Scottsdale, Arizona sponsored by the Tobacco Institute.
Were you there?
A No, I was not.
Q Philip Morris people were there, though?
A I don't know who was there. I was at another meeting.
Q You know about this meeting, though?
A I know it existed, yes.
Q Okay. You do know that certainly some people from Philip Morris were there?
A Actually, I don't.
Q Okay. In what jurisdiction is the FDA

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being sued by Philip Morris? Is that also in North Carolina?
A That's also in North Carolina.
Q One of the articles I read about you that after Ayer went under, you went to work for an ad agency in New York supervising such accounts as Campbell Soup.
A Yes.
Q That's accurate?
A Yes, it is.
Q What was the name of the that agency?
A At the time it was called Margiotta, Fertitta and Wise.
Q And how long did you work for them?
A About a year.
Q The document Philip Morris Tobacco Consistency Group, is that back yet?
I can start on something else if it's not. I think that was the thick document that you were having copied.
MR. HARDY: Was that from --
MR. ROSENBLATT: That's the title of it.
MR. ROSENBLATT: This is an extra copy. Do you have a copy of that?

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MR. HARDY: I don't know whether we have that one.
MR. ROSENBLATT: I gave it to you a few minutes ago.
MR. HARDY: Yes.
MR. ROSENBLATT: I can start on something else.
MR. HARDY: We don't have that yet.
MR. ROSENBLATT: Okay. So let me have the clean copy of the Philip Morris, USA Research Center, March 31, 1981, so I can have it marked as an exhibit. Thank you.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 1 for identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q Plaintiff's 1. Why don't you just take a look at that and see if you are familiar with that.
Have you ever seen it before?
A I don't recall seeing this before.
Q But as you go through it, it obviously

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is what it purports to be, a Philip Morris document.
A It's written by someone I know who's employed by Philip Morris and addressed to someone, and has Philip Morris, USA on the letterhead.
MR. HARDY: Mr. Rosenblatt, you made a comment of having a clean copy marked. I believe the copy is, including the one that the witness is looking at, have arrow like markings on them and I don't know whether those markings are from your office.
MR. ROSENBLATT: They are from my office. The arrows would be from my office.
MR. HARDY: All right. Is the underlining from your office also?
MR. ROSENBLATT: Yes.
MR. HARDY: All right.
MR. HEIM: Why don't we agree at some point later we will substitute a copy.
MR. ROSENBLATT: Absolutely.
MRS. ROSENBLATT: Some of these are marked.
BY MR. ROSENBLATT:
Q Okay. Plaintiff's Exhibit A, which you

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have in front of you, was written by Myron Johnston.
Who is that? Who was that?
A Myron Johnston worked in Richmond in our research and development department, and I guess the best way to describe Myron Johnston, as I remember him was, Myron Johnston was sort of a -- Myron Johnston's job was to look at data and to analyze data and basically to challenge the status quo thinking.
Philip Morris is an interesting company that way. We really emphasize that's its people's roles and responsibilities and duties and everything else to stand up and speak out and have a point of view, and Myron Johnston professionally was basically paid to look at information and make observations that he considered to be important to our business.
MR. WHITING: Mr. Rosenblatt, a minute ago, I thought you said Plaintiff's Exhibit A. I thought it was Exhibit 1?
MR. ROSENBLATT: I'm sorry, it's Plaintiff's Exhibit 1.
MR. WHITING: Thank you.
BY MR. ROSENBLATT:

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Q How long was Myron Johnston employed by Philip Morris?
A Gee, I don't know.
Q Do you remember when he left the company?
A No, I don't.
Q Do you remember if he simply retired or --
A I don't remember.
Q You don't remember the circumstances?
A No, I don't.
Q Okay. Did Myron Johnston, to your knowledge, have a Ph.D. in anything, any particular field of specialization?
A I don't know.
Q Okay. Now, it's obvious from looking at this document, on page one, that it's from Myron Johnston. It's directed to Dr. Robert B. Seligman, and who is Dr. Seligman?
A I believe at that time Dr. Seligman would have been the head of research and development.
Q And how long was he head of research and development?
A Gee, I don't know. I just don't know

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specifically
Q Okay. Is he still with Philip Morris now?
A Not that I know.
Q Okay. Now, looking at page one where it says the trends are, number one, after increasing for over a decade, the prevalence of teenage smoking is now declining sharply, and going to number three, after increasing 18 percent from 1967 to 1976, the absolute number of 15 to 19 year olds will decline 19 percent during the 1980's, with the period of sharpest decline beginning in 1981.
Have I read that accurately?
A I believe. Yes, you have read that accurately.
Q Okay. Going to page two, the top paragraph, quoting "it is inevitable therefore that industry sales will begin to decline within the next few years. That Philip Morris, USA can sustain its past rate of growth only by an acceleration of the rate of increase in market share. While this news is not good for the industry, I believe we can use these data and other data I plan to report on to good advantage

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in order to minimize the adverse affect on Philip Morris".
You would agree that the adverse affect that Mr. Johnston is talking about is the decrease in smoking in the age group from 15 to 19?
A No.
Q In the context of what we have just been over, what do you think he's referring to when he speaks of minimizing the adverse affect on Philip Morris?
A Well, there is points four, five and six on the first page that we didn't reference, point four being that the absolute number of 20 to 24 year olds will begin to decline; point five being that for the first time in a decade of polling average daily cigarette consumption for a dozen smokers is reported to have declined; and lastly, point six, in 1985, after declining for nearly a decade, the number of people in the age group most disposed to quit smoking, ages 45 to 54, will be increasing dramatically, so when he talks about the adverse affects and there are six points on the front page, I assume he's talking about all six points, not just the ones that you highlighted.

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Q And you think those other points equally relate to his discussion of minimizing the adverse affect on Philip Morris?
A My own personal opinion would be that knowing the industry as I do, that the points four, five and six I mentioned would actually be more impactful on the industry than points one, two and three that you mentioned.
Q Okay. I don't know that this page is numbered. There is a page, go maybe two or three pages forward.
A Okay.
Q In the top left it's the word summary Yes.
A Okay.
Q Okay. The first paragraph.
It is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's potential regular customer and the overwhelming majority of smokers first begin to smoke while still in their teens.
Is that an accurate statement? Is that a statement with which you agree, that the overwhelming majority of smokers first begin to

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smoke while still in their teens?
A Let me take a moment here. Let me take a moment, but it might save us sometime. I'm going to have a lot of trouble answering your questions without just sort of sounding as if I'm trying to be technical. Maybe we can find an agreeable word.
The problem with the word teens is, teens are 13, 14, 15, 16, 17, 18, 19, right? Teens includes 18 and 19 which are currently legal age of smoking and back when this memo was written, half the states in the United States had smoking at 16 legal, so I would like to find some kind of buzz word that you and I can agree on that every time you say teens, I don't have to come back and say what do you mean by teens, but underage smoking, under legal age smoking, something, because teens includes people who absolutely can start smoking legally at age 18 and 19, and I just don't want to concede that teens means 14, 15, 16 year olds alone.
Q Well, did you ever ask Johnston what he meant by the use of the word teens?
A No, I did not.
Q Okay. Well, I think we just have to

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live with that word because he uses the word.
A All right.
Q Okay.
A But in the context of –
Q And I agree with you. Teens could mean 13 to 19.
Now, do you agree with his statement in the middle of the top paragraph, the smoking patterns of teenagers are particularly important to Philip Morris?
A In a sense I do and in a sense I don't. One of the things Myron Johnston did, I think one of his jobs was back in 1981 and even before that, Philip Morris was a growth company. We talked about that earlier, and we were constantly worrying about what kind of physical capacity we needed to make cigarettes, and we spent a lot of time, and this group in particular, Myron Johnston's group would look at studies from outside sources. I believe from just assessing this document, all this data is from outside sources. There is no Philip Morris data in here. It's all just taking existing public information and analyzing it.
The size of the industry going forward

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coupled with our projection of our market share was an important consideration in terms of knowing what kind of factory capacity we needed. Our growth was coming faster than we had planned in any given year, and we seemed to be always short of capacity, so in the sense that the smoking patterns of the teenagers are particularly important to Philip Morris, they are in terms of what the industry maybe and what Philip Morris' size may be.
In terms of being important from a marketing standpoint, it's not important at all because we didn't market to teenagers.
Q Then why is he, in this document, talking about 15 year olds and 12 year olds?
A Because as I said, what the future of the industry would look like in terms of the size of the industry was important to us, but it was not important to us in the sense that we would go out and market to these people because we didn't market and we don't market to teenagers below legal age.
Q Now, the title of this report is Young Smokers, prevalence, trends, implications, and Related Demographic Trends, correct?

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A Yes.
Q On the very first page.
Do you know what Dr. Seligman did in response to this paper? Did he implement any of the recommendations? Did he act on anything in this paper?
A Your question is difficult for me to answer without reading it because you say recommendations.
Are there recommendations in this document or just –
Q Well,?
A Well, that's an important consideration.
Q Well, let me reword my question because I don't want to take the time for you to read every single word in the document, and simply ask you, do you know if Seligman did anything in response to this document?
A I do not know whether Seligman did anything in response to it, other than the fact I was running marketing and sales at this point and I can tell you that we did not market to teenagers, we don't market to teenagers, we changed nothing in our programming or our strategies during this period of time, so that I

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can't answer what Dr. Seligman did, but I can tell you that Philip Morris did nothing with it in the market place.
Q Don't you agree any reasonable objective reading of the document would lead one to conclude that at least Johnston is concerned about how to appeal to teens, to young smokers?
MR. HARDY: Well, I object to that. On the one hand, counsel, you tell the witness you don't want him to take the time to read the document. Then you ask him if a reasonable reading would lead him to a particular conclusion. If we are going to pursue this line of questioning, we have to permit the witness to read the entire document.
MR. ROSENBLATT: Let him read it.
MR. HARDY: All right.
THE WITNESS: Am I allowed to mark on this as I read it?
MRS. ROSENBLATT: Yes, because we are going to replace it.
MR. HARDY: Mr. Rosenblatt, can we go off the video and take a break while he's reading it in view of its length?
MR. ROSENBLATT: Sure.

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(Thereupon a recess was taken in deposition.)
(Thereupon the referred to question was read back by the reporter as above recorded.)
THE WITNESS: No, I do not agree to that characterization of the document at all.
BY MR. ROSENBLATT:
Q Okay. So now that you had the opportunity to read the document, taking it as a whole, what do you say Johnston's main purpose was?
A Johnston's main purpose was to take a series of pieces of information from outside data, there is no Philip Morris data in here, it's all attributed to outside public information, and to analyze it in a way that talks about the future size of the cigarette industry, the trends in the industry and what they mean for the size of the industry and to some degree, within it, for Philip Morris.
You talked about his recommendations. In the very end there are a series of recommendations, all of them relate to outside, looking more at outside data. There is one

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recommendation on page 22.4 that talks about putting a panel together of 18 to 21 year old smokers and talking to them.
Q Why is the title of this Young Smokers?
A I assume because Mr. Johnston considered smokers under 21 to be young smokers.
Q And obviously 12 is younger than 21, right?
A Is that a question?
Q Yes, it's a question. Obviously 12 is younger than 21.
MR. HEIM: Objection, argumentative.
BY MR. ROSENBLATT:
Q Right?
A Twelve is younger than 21.
Q Okay. Now, the same page that you were looking at before when the upper left-hand corner the word summary appears, in the third paragraph of that page, Johnston says average daily consumption of these young smokers also increased so much between 1968 and 1974 the number of 12 to 18 year olds who smoke 10 or more cigarettes per day more than doubled.
My question to you is, why is an employee of Philip Morris telling a company that

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doesn't target teenagers and youngsters, why is he talking about 12 year olds?
MR. HARDY: Objection, asked and answered. The witness has already discussed the reasons for this twice, I believe.
You can answer again.
MR. ROSENBLATT: Well, we --
THE WITNESS: Because this is public information that's available. It's generated by educational institutions, private companies, the government and it is of significance in projecting the size of the industry. It does not, in my judgment, and, in fact, I know because I know what we did and didn't do, it has nothing to do with the marketing of cigarettes.
BY MR. ROSENBLATT:
Q Go to the next page. The first paragraph, the last sentence. Johnston says we will no longer be able to rely on a rapidly increasing pool of teenagers from which to replace smokers lost through normal attrition.
Now, you would agree that that sentence means that at least at one time Philip Morris relied on a rapidly increasing pool of teenagers from which to replace smokers who had either quit

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or died?
A That's what the sentence clearly says. The question, my belief is that the word rely means that that's just what happened, but it does not mean that Philip Morris proactively did anything to get these smokers, which is, again, I say, I know that we didn't.
Q Now, in the next sentence Johnston says the decline in the prevalence of teenage smoking has been steeper among boys than among girls and now more girls than boys smoke cigarettes.
How did that sink about? Do you have any theory on that?
A No, I don't.
Q Then he goes on to say the decline in teenage smoking has been particularly pronounced among blacks which may account for the decline in Kools market share.
In the last couple of years, what is the status of black smokers? Is it increasing or decreasing?
A I believe it's decreasing.
Q Decreasing.
A I believe so.
Q Has that been steady since this time,

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the time of this report, which was in 1981, or has it been up and down?
A I can't say for certainty, but there have been a lot of newspaper articles recently that the incidence of smoking among the blacks is decreasing.
Q Now, the first sentence of the last paragraph on this page, Johnston says because of our high share of the market among the youngest smokers, Philip Morris will suffer more than the other companies from the decline in the number of teenage smokers.
Now, you would agree that what Johnston obviously means when he talks about Philip Morris suffering, is that they will suffer economically?
A I would agree with that, but I feel obligated to point out that the very next sentence to that says for at least the next decade, however, the population trend will have a much more powerful influence than we, Philip Morris, would be the least vulnerable of the companies as will be discussed later in this report.
Q Now, when Johnston says because of our high share of the market among the youngest smokers, how young is he talking about?

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A I have no other.
Q Go to the next page and look at table one, and in that table, there is a table for ages 12 to 14, there is a table for ages 15 to 16, and there is a table between 17 and 18, correct?
A That is correct.
Q It's obvious from those tables that there is a certain percentage of smoking that is done within the 12 to 14 age group.
A As measured by the Chilton Research Services for the National Clearing House on Smoking and Health, which is a government agency, yes, which is where the data comes from.
Q And table two, the title of which is percent of 15 to 18 year olds who are current regular smokers, and it has the percentages for boys and girls, correct?
A That's what the table is, yes. Again, as measured by the Federal government, not by us.
Q But obviously the reason why Johnston is producing this document for the head of research and development at Philip Morris is to analyze the teenage market at this time and what the situation may be for the future.
A That's what he's done with publicly

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available information, that's correct.
Q Now, the next page at the top is table five.
A I have to skip a couple of pages.
Q Okay. You now have table five, and the last sentence on that page says for both sexes, the modal grades of initiation of smoking has remained grade nine, but between 1976 and 1979, there has been an increase in the smoking incidence of seventh and eighth graders dramatically so in the case of the girls.
Have I read that correctly?
A You read that correctly.
Q Okay. Now, you will agree, will you not, that nowhere in this document is there any expression about the fact that a lot of people are smoking at a very young age?
A That's what the document's about.
Q What the document is about is a lot of people smoking at a very young age.
A It's taking information from the national whatever, the National Clearing House on Smoking and Health done by the Chilton Research Services and it's compiling the information that's been generated elsewhere, yes.

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MR. HARDY: I would like to ask to have Mr. Rosenblatt's question read back again. I'm not sure it was clear what he said and --

MR. ROSENBLATT: You are not sure he was responsive?

MR. HARDY: I'm not sure you realized what you asked. Can we go back two questions?

MR. ROSENBLATT: Fine.

(Thereupon the referred to question was read back by the reporter as above recorded.)

BY MR. ROSENBLATT:

Q What I was basically trying to convey, and obviously the question was not well asked.

Was -- there is no expression in here that boy, this is a bad thing, a moral position, an ethical position about the fact that all these kids are smoking and obviously some of them are smoking Philip Morris products. There is not a word in this document, is there, on a moral or ethical dimension?

A No, it's a statistical analysis.

Q Okay. Then I think on the next page is table six, and the title of table six is School Grade in Which High School Seniors First Began

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Smoking on a Daily Basis by Sex, 1976 and 1979, and this table shows that when you look at grade six and below, that in 1976, 5.7 of the males in grade six or below were smoking; in 1979, 6.5 of the males in grade six or below were smoking.

That's what the table reflect, correct?

A Yes, it does.

Q And you are telling me that this is something that means Philip Morris unhappy because you don't intend for people to smoke this young?

A What I'm saying is this is data that the government or Children who keeps showing up as the source, went out and measured, generally speaking, this data is, at least, in this document, this is not Philip Morris data which shows, in my mind, that we weren't studying it, I think it would be somewhat unusual if there is public data that we didn't study. We are interested in our business and we are interested in our industry, but the real question is whether we do anything about it and there is nothing in this document, and to say, as best I can say as having been involved in marketing so many years, nothing in our strategies or our programs or our actions that indicate that we responded to this in some kind of aggressive

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way to try and make up for what was clearly going to be some business issues.

Q Did Philip Morris ever do an analysis or a study or any research on what motivated the kids in grade six or below to start smoking?

A Not that I'm aware. I don't believe so. I think that's again part of the popular literature.

Q Do you know what these numbers would be today?

A No, I do not.

Q Now, go to page 21, please.

The first paragraph Johnston says well, the title is Conclusions and Implications. The decline in percent of teenagers who smoke, their decreased levels of consumption and the decline in their absolute numbers mean that the industry can no longer rely on an ever increasing pool of teenage smokers to replace adult smokers lost through natural attrition.

Does Philip Morris rely today, at least to a certain extent, on teenage smokers to replace adult smokers lost through natural attrition?

A Could you define teenage smokers, please.

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Q Thirteen to 19

A Philip Morris would market its cigarettes to legal aged smokers and above which in the United States means 18 and above. We would not market our cigarettes to people below legal age.

Q But you have no way whatsoever of controlling or even having basic information on the number of kids in the sixth grade and the fifth grade who see that Marlboro billboard and they were decide to try it?

A Well, that's really almost I think an unfair way to present it. First of all, in every state in this country, each of the 50 states, there are existing state laws that make it illegal, I think in 47 states for people below 18 to buy cigarettes, and in three other states it's 19, if my memory serves me correctly, so when you talk about sixth and seventh and eighth grades and you tie Philip Morris to that in your question, it's not really a reasonable question because the state laws prohibit people that age from buying cigarettes.

Secondly, in our marketing programs and practices, we in many cases don't market to people

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below 21 years of age, so when you talk about sixth and seventh graders smoking cigarettes, you are talking about something that has basically nothing to do with Philip Morris in my judgment. It has to go with families, it has to do with brothers and sisters, it has to do with peer influence, but to put that at Philip Morris' doorstep is not an assumption that I think is valid.

Q It's entirely valid because you told me that you have no way of knowing how many fifth and sixth and fourth graders see a Philip Morris billboard and respond to it, even though it's one thing to say we don't market, we don't target those kids, but you don't know the impact and effect your advertising has on those kids?

MR. HERM: I'm going to object. You are arguing with the witness now. You are not questioning him.

MR. HARDY: Right.

BY MR. ROSENBLATT:

Q You can answer.

A I believe that the literature at recently as the Federal Trade investigation of the Joe Camel advertising several years ago by the

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Federal Trade Commission indicates overwhelmingly that cigarette advertising in and of itself does not cause people to start smoking and that the factors that cause people to start smoking are much more easily identifiable as patterns of parental smoking, patterns of sibling smoking, patterns of smoking within peer groups, and it is not, in my judgment, advertising that causes people to start smoking.

Q So when a sixth grader who's never smoked, starts smoking and starts smoking a Philip Morris brand, you are telling us your hands are clean and your conscious is clear, it has nothing to do with Philip Morris because we don't want these kids for customers. That's a family problem or that's a sibling problem?

A I am saying to you that we do not market our brands to people below the legal age to smoke.

Q I heard you say that.

Do you deny that there are some sixth graders over the years right up until today that smoke, for their first cigarette, a Philip Morris brand.

MR. HERM: Objection, calls for speculation.

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THE WITNESS. I don't know that.
BY MR. ROSENBLATT:
Q What does your common sense tell you?
A My common sense says to me that if there are 100 sixth graders who smoke in the United States and Philip Morris has half the industry, my common sense tells me they would probably smoke a Philip Morris brand. That does not mean that our advertising or marketing programs cause them to do that. In fact, the data would indicate that it's more likely the reason they smoke that brand is because someone who they hang around with smokes that brand and they bumming it because they can't buy it.
Q Still in that first paragraph, the next sentence of Mr. Johnston, the particularly sharp decline in the percent of black teenagers who smoke suggests a future decline in menthol market share and the overall decline in teenage smoking, particularly among males, will undoubtedly have some adverse affect on Marlboro.
Now, don't you concede that in that sentence when Mr. Johnston talks about an adverse affect on Marlboro, he is talking about reduced sales of Marlboro?

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A Well, yes. Adverse affect on Marlboro would be reduced sales. What's not clear to me from this sentence is whether Mr. Johnston who, throughout this memo, is projecting forward as much in terms of the implications of the trend, is whether he is saying it would have an adverse affect on Marlboro now or whether or it would position the brand less strongly for the future, that its share would be impacted five and 10 years out. I don't think that's clear from that sentence.
MR. HARDY: Mr. Rosenblatt, when you are through with the document, I want to make a break.
BY MR. ROSENBLATT:
Q Okay. The last paragraph, the second sentence on page 21, what do you think Johnston means by this sentence, because we have our highest share index among the youngest smokers, we will suffer more than the other companies from the decline in the number of teenage smokers?
A I think that's a statement that's self evident. It is covered, as I said before, with the next sentence which says however, the overall population trends will have far more impact, far

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more impact on cigarette sales, and in this regard we are well positioned, so I wouldn't point to this teenage commentary as being a major driver of our thinking.
Q In terms of the sentence I just read, it's obvious from the context of this document, isn't it, that when Mr. Johnston talks about the youngest smokers, he's talking about sixth grade and below, from the various tables that are in here?
A Well, he's -- yes, he's talking about those youngest smokers in the tables. Of course, the numbers that the government published on those tables, would indicate that those people are of absolutely no significance in the context of the industry sales. It's just a non meaningful number.
Q The document is 22 pages long and there is not a word in there, any expression of any sentiment saying it's a bad thing for sixth graders to smoke.
MR. HEIM: Objection, asked and answered.
BY MR. ROSENBLATT:
Q There is not a word about that, is

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there?
A Not that I see.
Q And was there ever something from Seligman, going back to him, to the effect expressing that sentiment or from anyone higher up in Philip Morris?
A With regard to this document?
Q Yes.
A Not that I'm aware of.
Q Okay. We will take a break.
(Recess is taken in deposition.)
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 2 for Identification, a copy of which is attached hereto.)
MR. ROSENBLATT:
Q Okay. Mr. Morgan, you have in front of you this document dated June 2, 1976, and as I read it, it seems to be a memorandum from Al Udow, U-d-o-w, to you?
A Yes.
Q Okay. Who is Al Udow?
A Al Udow was in the Philip Morris, USA

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marketing research department at that time.
Q When did he leave Philip Morris?
A I don't know.
Q Can you tell me generally how long he was employed by Philip Morris?
A My memory is that he was a reasonably long term employee. I don't know when he left and probably because he may have left after I left, but I just don't remember his leaving.
Q The subject of this memorandum is why people start to smoke, correct?
A That's what it's titled, yes.
Q Now, is this something you asked for or how did it come about, if you know?
A Can I look at it for a minute just to refresh myself?
Q Sure.
A Well, without reading through it all right now, the first paragraph would indicate that it was written to me to pass along to Mr. Clifford Goldsmith, who is identified in here of having raised a question as to why people start to smoke.
Q Now, the first sentence in the second paragraph is, there are surprisingly few hard facts on the question of the initiation of

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smoking.
Was that true back then in '76 and does that remain true today?
A I believe so. I believe that's a fair statement.
Q Okay. Go down about four paragraphs and let me, with my thumb, show you where I'm at.
A Got it.
Q Okay. Udow says, as mentioned above, most smokers appear to begin smoking between the ages of 10 and 18.
Was that true then and is it true today, as far as you know?
A I don't personally know whether that's true or not true, but I have no reason to disagree with it.
MR. HARDY: I'm not sure, I've forgotten the question, Mr. Rosenblatt, but you weren't representing that was Mr. Udow's statement. That was a quote from something else in the Udow memo. I don't remember what your question was.
MR. ROSENBLATT: Well, I quoted. It doesn't have quotes around it. It wasn't clear to me whether that was Udow's statement.
MR. HARDY: Well, if you look earlier in

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the document, he says he's summarizing --
MR. ROSENBLATT: What someone else --
MR. HARDY: An entry by a Joseph Mularazzo from the University of Oregon Medical School, primary author.
MR. ROSENBLATT: Okay. Yes.
BY MR. ROSENBLATT:
Q So he's quoting Dr. Mularazzo?
A And then that paragraph starts off, of course, with these studies consistently have identified parental smoking is one of the most important predisposing factors in smoking among school age children and the sentence that you read after that.
Q Now go to page three. This is where I'm at.
A Okay.
Q It says many boys and girls start smoking to show their independence as a symbol or revolt against authority, to feel sophisticated and grown up, to be one of the crowd, to gain social status, to have something to do.
The advertisers of cigarettes exploit this urge by creating an image of a smoker as an outstanding athlete, a handsome virile outdoor

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man, a nonchalant campus leader, a man who succeeds, a sophisticated charming young woman.
Agree or disagree with that?
MR. HEIM: Object.
MR. HARDY: Object to the form. You mean does he agree that's what it says?
MR. ROSENBLATT: No, of course I don't mean that because I'm a good reader. He would have no choice but to agree that's what it says because does he agree with the substance of it.
MR. HEIM: Excuse me for just two minutes.
When you say he, you are referring to the author of this document?
MR. ROSENBLATT: No, I'm referring to Mr. Morgan when I say that.
MR. HEIM: I know that, but in your question, it seemed to be unclear that this is the author of this document quoting from this fellow David Hara and these things are all in quotes.
MR. ROSENBLATT: I agree. I simply said this language appears in this document.
THE WITNESS: Maybe I can answer by just starting to say, that this whole document is Al Udow's reporting of what other people have said.

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I don't believe there is anything in this document that relates to, I think he was Dr. Udow actually, Dr. Udow's belief as any of these subjects. This is all extracted from other people, and in this particular quote, this comes from Harold S. Diet of the American Cancer Society quoting liberally from David Hara, and again the National Clearing House For Smoking And Health which relates to our previous discussion, and it says much of what he says is stated authoritatively without source or supporting data, so let me answer your question. You read two paragraphs I believe. Is that right?
BY MR. ROSENBLATT:
Q Yes.
A Okay. Many boys and girls start smoking to show their independence as a symbol of revolt against authority to feel sophisticated and grown up to be one of the crowd to gain social status to have something to do.
I would generally agree with that. Okay, as a parent, as an observer and as once, once a boy.
The second paragraph I don't agree with, and the reason I don't agree with it is that the

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specifics that are involved here. There is no question that when we run advertising, we try and present our product in an attractive light. I mean, that's what advertising is all about, but the specifics don't hold up here so well.
First of all, I'm not aware that basically since the early 1960's, that advertising of cigarettes has had athletes in it, showing athletes smoking.
Handsome, I'll buy off on that. Virile outdoor men, arguably some brands don't use people at all. A nonchalant campus leader I really object to because the cigarette advertising code, which is a self regulated code, has as a provision in it which we had adhere to, that you don't show people who appear to be under 25 years old, so it's very difficult for me to assume that a nonchalant campus leader falls into that category.
A man who succeeds. As I think of cigarette advertising in the last 20 to 25 years, I don't -- I'm not sure particularly portrays a person who succeeds.
A sophisticated charming young woman. Maybe, but this is this quote doesn't hold up in

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total.
Q Why do you think Udow is quoting all this material?
A I think he's quoting it because it's what other people have said.
Q But to what purpose? Where is he going with it?
A I think what he's doing, he's answering Mr. Goldsmith's request what we know from outside sources on why people start to smoke. What is the information that's out there on why people start to smoke.
Q Would you not agree that Udow, at least, considers most of the material he's quoting, if not all of it, to be authoritative in answering, helping to answer this question?
A No, actually in the quote words of market research, the sentence at the top of page three, much of what he, Harold Diet, says is stated authoritatively without source or supporting data, in market research lexis words for be careful, this guy may be just spouting off without having any supportive information and under both of the paragraphs you read, Dr. Udow put no source given, so in other words, what he's saying is Dr. Diet

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may think this, but Dr. Diet is not getting this point of view from somewhere where he's quoting a source as being authoritative on it.
Q You would agree that in the great majority of Philip Morris advertising in the last 10 years, the models used are young?
A No, I wouldn't agree with that at all.
Q Okay.
A At all. Not at all.
Q Virginia Slim ads.
A Women.
Q Have you ever had a woman over 50 in a Virginia Slim ad, as the focus of the ad?
A Ever?
Q Ever.
A Yes.
Q Last 10 years?
A No.
Q Tell me about ever because obviously ever was unusual.
A I think if you look back at the original commercials on Virginia Slims, it showed a lot of older women in very prominent roles as it talked about what it used to be like for women compared to what it's like today.

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Q And the reason why there hasn't been an older woman in the last 10 years in a Virginia Slims ad is because your market research told you your focus was younger women.
A No, I don't believe that's true. Virginia Slims main franchise is 35 to 44. If you look at its share among different age groups, I believe you would find its highest share is among woman 35 to 44.
Q How old do you figure this model is?
A I know she's over 25 because we check birth certificates on models before we use them.
Q But she sure as heck isn't 45.
A I didn't say she was 45.
Q No, but she sure as heck, if she's over 25, it ain't by much.
A I don't know that.
Q Is it fair to say that ad has a sexual connotation?
What's that ad all about?
A It's about women's attitudes and that's why the campaign line it's a women thing. There is copy with it.
Q Now, is that ad, which we will mark as plaintiff's exhibit three.

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(The document referred to was thereupon marked as Plaintiff's Exhibit Number 3 for Identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q Does this ad have a sexual connotation, plaintiff's exhibit three?
A Not to me it doesn't.
Q What's the guy doing without his shirt? Doesn't that kind of indicate to a reasonable observer that it's either shortly after sex or before sex?
A No, I don't think so.
Q What is it all because?
A It's a line that if we borrow something of yours, it's ours, and it is a classic husband wife scenario that the wife is borrowing the husband's shirt and therefore, he's standing there and doesn't have a shirt to put on.
Q You are telling us that these two people, you mean to convey they are married, this woman and this man are married?
A I don't think that's clear from the ad.

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I gave you my interpretation of it.
Q Why? Based on what?
In other words, if someone were to say married or unmarried, why is your interpretation that these two people, the guy without the head, is married?
A That's just my interpretation.
Q Okay. Because that's a more palatable interpretation for you to take publicly?
A No.
Q That they are married and you are not encouraging sex. You wouldn't want to be in a position where you were encouraging sex among unmarried people.
A If you would like to consider these people unmarried, that's fine with me. I think the ad is still not sexual.
Q Okay. In the context of this ad, what is the interpretation of it's a woman thing?
A It's something that women understand goes on in their lives. It's part of being a woman.
Q What's that, borrowing --
A This whole interplay between a man and a woman about borrowing something.

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MR. HEIM: May I see the exhibit, please
MR. ROSENBLATT: Plaintiff's exhibit four.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 4 for Identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q Take a look at the Merit ad where there is a woman in the ad.
MR. HARDY: By the way, for the record, since these ads are exhibits that we were not given copies of previously, I just want to be sure that the Reporter knows that we do need to have a copies made of these exhibits. We don't have copies of them.
MR. ROSENBLATT: That's fine.
MR. HARDY: Either three or four.
BY MR. ROSENBLATT:
Q As you look at that ad, you figure the woman model there is under 30?
A I know she's over 25.

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Q But does she look somewhere between 25 and 30?
A She could be 35.
Q She could be 35.
A We are talking about how she looks.
Q Yes.
A I can see her as 35. As I get older, they look younger.
Q None of your advertising has people smoking cigarettes in sad situations, do they?
You never had an advertisement that somebody smoking a cigarette as they get into a car leaving a cemetery?
A No, I don't think we have run an ad like that.
Q You portray in all your advertising basically happy situations, people smoking and having fun. Basically all your models are smiling except the Marlboro guy.
A Yes, and I think you asked me earlier about age, and I responded I didn't think our models were all right at 25. Marlboro is by far our largest advertised brand and gets over half our cigarette advertising.
I'm guessing at this, but I feel fairly

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comfortable, if you take a year of Marlboro advertising and took the average age of the people we show, it would be at least 40, maybe up to 50 years old. In terms of the question on the table, Marlboro does not show happy situations necessarily. I mean, we can debate what's unhappy or sad, but Marlboro has a lot of ads with people in the middle of rain storms, with dark skies. Marlboro is not a happy go lucky brand in its advertising at all.
Q It always shows beautiful pictures of nature, doesn't it?
A Not always.
Q Usually. You have some Grand Canyon Marlboro ads?
A We call them vista ads, and yes, we do run vista ads, but there is a mixture on Marlboro.
We also show pictures where basically you can just see a head and we show other pictures that sort of don't have anyone features dominant.
Q Vista meaning what?
A Scenery.
Q Scenery, okay. Here's a Philip Morris ad for Parliament Lights. Plaintiff's exhibit

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five.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 5 for Identification, a copy of which is attached hereto.)

BY MR. ROSENBLATT:

Q This appeared in People Magazine, February 24, 1997. It's showing a man and a woman. If they are both over 25, they don't look much over 25, do they?

A You keep asking that question. We have as a matter of policy that we will not use models in our ad that are either over -- that are under -- we will not use models that are under 25 or appear to be under 25.

Q Okay. Well, just looking at those two people, if you had to guess their age, wouldn't you guess there was some between 25 and 30?

A No. Actually, personally, I would say that the guy is between 30 and 35 and the woman is 30, maybe a little more than 30. I don't think they look 25.

Q And obviously you can't tell if they are

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married or unmarried or do you see a ring?

A No, I cannot tell.

Q Okay. They both look pretty happy, don't they?

A Yes. Parliament, this campaign is about getting away from it all and that usually makes people pretty happy.

Q Okay. Getting back to this document from Al Udow, on page four toward the bottom, start of the habit, the smoking pattern is established relatively early.

Do you agree with that generally?

A It's such a relative statement. No, I don't. What does it mean relatively early?

Q Your guy wrote it.

A No, he did not write it. This is quoted out of the Encyclopedia Americana.

Q Your guy decided what to quote. There was a vast array of literature and documentation and studies and your guy decided to quote what he decided to quote.

A What did he say about it? Up at the top it said the Encyclopedia Americana, 1969, says that the way smoking begins is not fully understood, and then attempts to explain it.

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Q Precisely.

A Okay.

Q And he chose to quote that. Say that.

A That's true.

Q Okay. Then he's quoting people that have some ideas about smoking, which he decides, Udow decided to put in this paper to you for you to consider either the thoughts of these outside people are valid or they are invalid or somewhere in the middle, right?

A That is correct.

Q Okay.

A For Mr. Goldsmith to decide since I'm passing the memo along.

Q Why didn't he just direct it to Goldsmith?

A Because I was head of marketing at that time, and Mr. Goldsmith had asked me to get the information and that's the way organizations work.

Q Wasn't one of the purposes of this document to help you and Goldsmith understand why people start to smoke?

A Probably, yes.

Q Okay.

A Or at least what other people thought

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were the reasons.

Q Okay. Now, he goes on to say before 12 years of age, less than five percent of boys and one percent of girls smoke, but soon thereafter, a steady increase begins. In the 12th grade, from 40 to 55 percent of children are smokers.

Do you think that is or was an accurate statistic back then? Do you go think it's an accurate statistic today?

A You again said he says. He quotes from the Encyclopedia Americana.

I don't know whether that was accurate or not then. That number seems very high to me right now, right now meaning in terms of today.

Q Now, on the next page appears the statement in the middle of the page, both more smokers and more early starters are found in the unskilled working classes.

A I see that.

Q What is your understanding today of whether smoking is heaviest among the educated, college degrees and beyond or people with lesser years in formal education?

A I think it is a fair characterization, without getting into degrees of difference, that

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the more educated and higher income one is, the less likelihood one is to find them smoking, with the exception of cigars.

Q Now, on page seven, I think if I'm reading this correctly, that at this point Udow is referring to a Philip Morris study.

A Where?

Q Or a study done for Philip Morris. Page seven, information on the motivation.

A Yes.

Q Okay. Information on the motivation that leads to a continuation of smoking comes from a special study done for Philip Morris brand 1971.

Where are the results of that study, if you know now?

A I don't know.

MR. HARDY: If counsel is interested in the results, I refer you to the next page where it lists references, and the first one shows a perceptual context of smoking. I think that's the brand study that's referred to.

BY MR. ROSENBLATT:

Q The next document I'm going to want the witness to look at is a paper dated June 12, 1970,

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from Shirley Wilkins and Bud Roper to Steve Fontaine. The title of which is suggestions for research, re: Answer questions raised on Philip Morris benchmark study.

MR. MOSS: Will you hold it up?

MRS. ROSENBLATT: Probably in that same group that was stapled.

MR. ROSENBLATT: Got it?

MR. HARDY: Not yet.

MR. ROSENBLATT: This will be plaintiff's exhibit six.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 6 for Identification, a copy of which is attached hereto.)

BY MR. ROSENBLATT:

Q What was Goldsmith's job at that time, the time of this memo?

MR. HARDY: We are back to five now?

MR. ROSENBLATT: Yes.

THE WITNESS: Mr. Goldsmith would have been president of Philip Morris, USA at that time.

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BY MR. ROSENBLATT
Q The same job you have now?
A Yes.
Q How long did he occupy that position, approximately?
A Five or six years.
Q Is he living?
A Yes, he is.
Q And is he retired?
A Yes, he is.
Q Do you know where he lives?
A Yes, I do.
Q Where?
A Park Avenue in New York.
Q What is the address?
A I thought you would ask that. It's on, I think it's on 77th Street. I don't know the number.
Q You have occasion to see him, talk to him occasionally?
A Yes.
Q How often?
A Well, right now maybe once every couple of weeks. I used to see him, after he retired, I used to see him very frequently. We were both on

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the National Multiple Sclerosis board together. He was the chairman of the National Multiple Sclerosis Society and I was head of fund raising for it.
Q He still has a lot of Philip Morris stock?
A I have no idea what he has.
Q Who is this -- has this been marked now plaintiff's exhibit six, from Shirley Wilkins and Bud Roper.
Who are they?
A Shirley Wilkins and -- Shirley Wilkins and Bud Roper represented the Roper Organization, which is a national polling organization. I think I'm certain Shirley worked for Bud Roper.
Q And Steve Fountain, the memo is to him?
A Yes. Steve Fountain would have been -- he was in the marketing research department. I think at that time he probably would have been head of marketing research.
Q The subject is suggestions for research, re: Answer questions raised on Philip Morris benchmark study.
What benchmark study does that refer to?
A I do not know.

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Q I day. Now, the very bottom of page two of this document, the heading of which is young people, 14 to 17. To get a reading on the smoker percentage and Marlboro share among teenagers not covered in the benchmark study, we recommend interviewing young people at summer recreation centers, at beaches, public pools, lakes, etcetera.
If you go down a couple of lines, the document says, in addition, true answers on smoking habits might be difficult to elicit in the presence of parents.
Would you agree that obviously what is being suggested here is that in order to get more truthful answers from these kids, it's best to, from people in the age group from 14 to 17, it's best to interview them outside the presence of their parents?
A May I take a minute to scan this document?
Q Sure.
A I'm not familiar with it.
Q Sure.
A I won't read it entirely.
Okay. Thank you. I didn't read it, but

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I sort of familiarized myself with it.
Q What was the question? Was there a pending question?
A Yes. I believe. Shall I restate it as I understand the question?
Q Sure.
A I think what you asked is did I agree that it would be, you would get better more accurate answers if you interviewed young people not in the presence of their parents.
Q Correct.
A I think so.
Q Now, the last page of this document, it's a table, looking in the left margin, population, 14 to 17 years of age, total over 15 million, and according to this document, of the 15 million people in the age group 14 to 17, 25 percent of them are smoking.
A That's what that table says.
Q And as I understand the rest of that line, it means that if you limit yourself to the smokers, 33 percent of the smokers are smoking Marlboro's.
A Yes, with one proviso that the chart is labeled estimated total Marlboro share based on

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assessed smoker. This is not accurate data. This likes look to me it's the Roper Organization estimating.
Q Okay. Now, the next document I would like to have you look at, I think is also a Roper Organization document, July, 1974, a study of smoking habits among young smokers.
I would like to have that marked as plaintiff's exhibit seven.
MRS. ROSENBLATT: This is the front page. It says copy number 17 on it.
MR. HARDY: Let me see it again, Susan.
MRS. ROSENBLATT: That's not amongst staple marks.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q Just familiarize yourself with that.
A Oh, boy, this type.
Q Yes. It's not very good.
Is this a document that you are familiar

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with?
A No, it's not.
Q But you do know that the Roper Organization did work for Philip Morris?
A Yes, I do.
Q Okay. Look at page six.
A One second. It goes from three to six.
MR. HARDY: There is no four or five.
BY MR. ROSENBLATT:
Q Apparently.
A Okay.
Q The last sentence on page six says as follows, Certainly Philip Morris should continue efforts for Marlboro in the youth market, but perhaps as strongly as possible aimed at the white market rather than attempting to encompass blacks as well.
Do you know if that recommendation was followed?
A It depends on how one identifies the youth market. The first page, it talks about studies of smokers under age 24, and clearly yes, among legal aged smokers and above, we would have marketing programs designed to capture share smokers of legal age and above.

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Q Now, --
MR. HARDY: I do for the record, Mr. Rosenblatt, want to point out that the Bates numbers at the bottom right indicate that there are pages missing, probably not only from the document, but from the copied version of the document. That is, the document goes from page three to six. Page three is Bates number ending 510 and the next page is ending 513, so apparently there is a 511 and 512 that's not included here.
MRS. ROSENBLATT: Perhaps if you can give us those, because we just have what we obtained from other cases, and we had a request for production for documents, and if you have those missing pages, we don't have them. We certainly weren't intending to leave them out.
We would like to have them included, we just don't have them.
MR. REIM: Are these Bates numbers from another case?
MRS. ROSENBLATT: Most of them documents are from other cases. We got very few documents. Right now we are inspecting. We got very few in this case. We have done the request for production, but we haven't had much produced.

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MR. ROSENBLATT: I want to get into plaintiff's exhibit eight, Philip Morris Tobacco Constituency Group.
MRS. ROSENBLATT: I think that was just copied.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 8 for identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q First of all, Mr. Morgan, what is the Tobacco Constituency Group?
A I really don't know.
Q Is this a document you have seen before?
A Not to my knowledge, no.
Q Why don't you just glance through it at some of the headings.
MR. REIM: Stanley, while he's doing that, I note again that there is writing on the front page that was unlikely on the original and some lawyer may have written on there and again we will try to substitute originals.
MR. ROSENBLATT: Correct. That's fine.

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THE WITNESS: Can you give me a --
BY MR. ROSENBLATT:
Q Yeah.
A It's getting late and I'm getting slow here.
Q It's not clear to me or from the document that I can tell as to who authored this. Presumably it was the Tobacco Constituency Group.
MR. HARDY: Well, excuse me, Mr. Rosenblatt. The document itself shows that at the time of the document, there is no such organization because the second page of the document says specifically I would urge the creation of an informal intercompany task force called the Tobacco Constituency Group, so whoever authored this, is recommending such a group.
BY MR. ROSENBLATT:
Q Do you know who authored this paper?
A No, nor do I know when it was authored. I can't find any date on it at all.
No, I neither know the source of it nor the time frame of it.
Q Looking at the, my page in the upper right-hand corner, it's page 2. 002.
A Yes.

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Q The goal. Improving the political climate within tobacco producing and manufacturing states and in Washington so that we can continue to manufacture and sell our products profitably.
That certainly is a legitimate goal of Philip Morris, isn't it?
A As far as I'm concerned it is, yes.
Q Now, in terms of trying to figure out the date of this document, look at page seven at the bottom.
A The bottom of seven, yes.
Q There is a second called plants announcements, and about five or six lines down under that, it talks about a case in point was Philip Morris' announcement 18 months ago of the construction of a new facility and Park 500.
Does that help you?
A It really doesn't. If it said the new facility was Park 500, then I may might be able to pin it down, but the way it's written, I don't know which new facility they are referring to, but I just can't, I'm sorry I can't pin it down. It makes me think that it was slightly longer ago versus later term I don't know. Is the timing of it important?

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Q Well, look at page 10.
A Okay.
Q Ten at the bottom.
A Yes.
Q About five lines up from the bottom.
A Yes.
Q Where this sentence appears, this kind of aggressive political support program was utilized in a Virginia House of Delegates campaign in 1989.
A Right.
Q That would certainly suggest --
A It tells us something.
Q That it's after '89.
A Yes. Actually, I would have been wrong on my guess from the previous one because I would have guessed mid '90's from that language, so I really don't know, but I agree it's after '89.
I'd also be willing to guess on time that it's not been in the last two years because I think I would have known about it.
Q Okay. Page three at the bottom.
A Yes.
Q You see the Kentucky Derby paragraph?
A Yes.

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Q Okay. Quoting from this document, the Kentucky Derby, for example, presents us with an outstanding opportunity for cooperation between community and government relations. The Louisville manufacturing and sales groups have jointly held derby activities for years. We should work cooperatively with manufacturing to augment our own entertaining schedule.
In addition, we should consider hosting Federal legislators as well as state leaders.
That's something you would approve of today?
A Yes, I would.
Q And the last paragraph on page three, another prime entertaining activity revolves around the Philip Morris suite at the Charlotte Motor Speedway. There are two big races, one in the spring and one in the fall. Manufacturing and government relations already work closely together to involve locally elected officials in race activities. We should seek to expand government affairs involvement cooperatively with manufacturing by involving certain states and Federal politicians who are more likely to be stock car racing advocates.

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You would agree with that today?
A No. This one I don't like.
Q Okay. Why not?
A Because the stock car series is sponsored by Winston.
Q Back then it was sponsored by Philip Morris?
A No, it was sponsored by Winston.
Q So this is just --
A We don't know when back was, but if it's within the last five or seven years, yes, it was sponsored by Winston.
Q Also by Winston.
A So that one sort of rankles me a little bit.
Q Besides the point, but if it was sponsored by Philip Morris, it would be an okay paragraph?
A For me it would be.
Q Yes. Okay.
MR. HARDY: Mr. Rosenblatt, I want to take a break when you finish this document.
MR. ROSENBLATT: Okay.
BY MR. ROSENBLATT:
Q Page four. Let's start at the top.

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We should also expand on the manufacturing sales government use of the Philip Morris suite at Charlotte Hornets games. As an idea, we can bring important federally elected politicians to Charlotte for basketball games and get them to Cabarrus for a planned tour and a speech to Cabarrus management.
Philip Morris also has a suite at the Richmond Speedway. It has been used primarily for entertaining constituency groups on race day. The entertainment could easily be expanded to include elected officials.
Do you agree with that?
A With what?
Q That these are good ideas?
A Yes.
Q Now, the last paragraph says, on page four, while we should also strive to provide financial support or gifts to conventioneers who come to Richmond, we should begin to expect a little bit of something in return for our generosity. At the very least, we could ask any group who wants our money if they may be willing to take a position on our issues in the future.
You like that paragraph?

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A I like it. That one sort of rankles me when I know that the president and the vice-president in the last election, who are hardly friends of our industry, asked us for money. I wish we would hold to this a little more than we do.
Q But you gave money?
A Yes.
Q To both parties?
A We gave money to both parties.
Q Which is a win win kind of situation, isn't it?
A If you gave 50-50, it might be. We didn't give 50-50.
Q How much did you give to Dole?
A I can't categorize. That's not my area of responsibility. I know what was written in the press. I think I'm pretty sure it's all public information anyway with the Federal election law reporting, and, generally, I think the reports are we gave 10 million dollars to the Republican party at all levels, and a million dollars to the Democratic party at all levels or something like that.
Q Looking at page five, the second

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paragraph, the last sentence in the second paragraph, in Richmond, we should endeavor to hold any such reception during the 1991 legislative session.
A That times it.
Q So it's sometime between '89 and '91?
A I agree.
Q Okay. The last paragraph on page eight.
A Eight?
Q Eight. This kind of information makes for great billboard propaganda and is also useful as filler for the dozens of neighborhood and community newspapers who are constantly looking for news to print.
In this sentence, what is meant by great billboard propaganda?
A Just a moment. I need to read what they are talking about.
Well, the preceding paragraph talks about the engagement of Philip Morris employees to participate in voluntary philanthropic organizations, and it talks about pride in employees and presents us with an opportunity. I don't understand billboard propaganda. I certainly understand filler for dozens of

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neighborhood and community newspapers who are constantly looking for news to print. I don't know how, whoever authored this article, would even consider that you would take employee involvement in civic organizations and turn it into billboard advertising. I mean, I'm not aware that anybody does that, anybody.
Q Page 15.
A Somewhat naive comment, I think.
Q The first paragraph on page 15.
Philip Morris sponsored tobacco political events. These events are primarily agricultural political events whose main purposes are to, number one, make tobacco farmers feel good about themselves and their industry; two, make politicians, US senators, Congressmen, state and locally elected officials, feel good about the industry, their tobacco growing constituents and Philip Morris, and three, make said politicians look good.
Do you like that paragraph?
A Do I like it?
Q Yes.
A No, I don't like it. I don't like it at all.

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Q Why not?
A Because to me it is a reflection of the way the political game is played today. I do not like it because it's make believe. It's to me a reflection on the way our political system works today. It's what labor unions do, it's what manufacturers do, it's what the National Teacher's Association does, it's what the American Cancer Society does. It's the way the political game is played, and as an American history major in college, I'm not real happy with it.
Q But as a businessman, certainly as the president and CEO of Philip Morris, I assume it's your position, although you don't like it, in order to be a participant and to be effective, you got to play that game?
A You got to play that game.
Q Or else you are nowhere?
A Or else you are handicapped.
Q Okay. And since you have to play the game, obviously Philip Morris has become very good at playing the game.
A I don't think we are as good as we should be.
Q What are you doing to get better?

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A I think that we are evaluating what we do, how we do it and saying basically if you look at the current situation of the tobacco industry politically, I don't think we are in real good shape, and clearly we haven't been as effective as we should be, since we sell a legal product, we sell it within the laws of the United States, why are we getting beat up as badly as we are?
Q Well, you have been very effective because it's still legal.
A That it is.
Q You know, I mean, all the public health organizations are saying your product kills half a million Americans every year and it's still legal.
A Yes.
Q So you have been pretty effective.
A Well, we don't make it legal or not legal. Someone else does.
MR. ROSENBLATT: Okay. You want to take a break after this document.
MR. HARDY: Yes.
(Recess is taken in deposition.)
MRS. ROSENBLATT: We will substitute clean copies. Anything Stanley touches, be marks

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them.
MR. HEIM: Why don't we just stipulate as to that and we will worry about it.
MR. MOSS: Which one are we on now?
MR. ROSENBLATT: Something called our position word by word, unconfirmed smoke, facts you should know; an ad called how the EPA manipulated science to certain a political cause.
BY MR. ROSENBLATT:
Q Before I get into the specifics of any of these ads, is it fair to say that on this issue of secondhand smoke, Philip Morris really fought back hard, in addition to suing the EPA, you took out full page ads, basically as you have done in this deposition, criticizing the methodology as well as the conclusions reached by the EPA and accusing them of having a political agenda.
A I'd agree with you up until the last point. I'm not sure that we have accused them of having a political agenda. I did say that earlier. I'm not sure that what you characterize as our lawsuit or the ads mention political agenda, but yes, definitely that their methodology was flawed.
Q I mean, here's an ad which I will mark

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as plaintiff's exhibit nine.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 9 for Identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q You have got plaintiff's exhibit nine in front of you, the title of which is how the EPA manipulated science to serve a political cause. I mean, that is a pretty tough caption. No holds barred.
A Point granted.
Q Okay. Manipulated is not a nice word.
A Believe me, I understand that.
Q And they presented this as science and you are saying this is basically as science to serve a political cause.
A Yes. This ad says that.
Q This ad says that. Wouldn't you admit that you have to be pretty desperate if the basis upon which you are knocking the EPA is an article by Jacob Sullum, a guy you never heard of when I asked you about him earlier, who's not a

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distinguished physician or scientist?
A I don't believe that's the basis on which we are knocking the EPA. I think this ad quotes that Jacob Sullum. I don't believe the lawsuits based on Jacob Sullum. I don't believe my testimony and my beliefs are based on Jacob Sullum, since I don't even know who he was. This ad happened to use Jacob Sullum's article.
Q Okay. I mean, basically you gave this basic nobody in the field of science and medicine, you reprinted his whole, I mean, that's an author's dream to have a full page in the New York Times and the Wall Street Journal and other newspapers across the country.
MR. HARDY: Object to the form of the question.
BY MR. ROSENBLATT:
Q My question is, couldn't you find anyone a little better qualified to agree with you as to how the EPA manipulated science to serve a political cause?
MR. HEIM: Objection.
THE WITNESS: Well, let me answer that in a couple of stages. First of all, you asked the question couldn't you, assuming me, find

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someone better. I'm not responsible for this ad in the sense that the people who run this ad are in a different department than I supervise. They are in a worldwide regulatory group.
Secondly, I think that there is no basis for me to judge your characterization of Jacob Sullum. You called him a nobody. I don't know that he's a nobody. I see he's that the managing editor of Reason Magazine.
BY MR. ROSENBLATT:
Q Which you never heard of.
A No, but I have heard of Forbes Media Critic, and lastly I would say that whether you want to characterize Jacob Sullum that way or not, I doubt, maybe I shouldn't say it this way, I don't think one would want to say that the congressional research office is a nobody. They are a very powerful force in Washington. They are independent and Congress uses them to evaluate other reports coming out of government and the congressional research office found the EPA study very, very flawed.
Q Why didn't you quote that?
A I don't know about the timing, whether the congressional research office report was

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actually out by the time this ad ran.
Q Now, as a man with a very deep and heavy background in marketing, these ads would or would not come within the purview of marketing? I mean are these educational ads? How would you characterize them?
A I would call them public affairs ads. They are certainly not brand advertising or the classical marketing that I grew up in. I guess these are, I guess some people call these issues ads actually. I think that's sort of the popular phrase for them.
Q Certainly not advertising in the common usage of the term. You are not selling people to by Marlboro.
A Well, I don't know. This isn't any different than, for example, the stuff that the, whatever it's called, the Center Tobacco Free Kids is running right now. That's advertising, too.
Q Well, I wouldn't characterize it. I think I know the ads you are referring to and basically the thrust of those ads is don't smoke.
A No, that's not the thrust of those ads at all. I don't know why you say that. Those ads are trying to vilify and criminalize the cigarette

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industry. They don't say anything about not smoking. They totally focus on the assertion that we market to youth and call us liars.

Q. A lot of people. That's nothing new?

A. No. I'm just saying about what kind of ads these are.

Q. Certainly you can't be sensitive about being called liars because every Surgeon General and when your predecessors testified in Congress in April of 1994, that famous picture with all of the CEOs raising their hands, 90 percent of the American public thought you guys were lying, so that's nothing new.

MR. HARDY: Objection.

MR. HEIM: I'll object to that characterization and to the argument and probably the seven other reasons why that question is objectionable.

BY MR. ROSENBLATT:

Q. Don't you think that's true, that the great majority of the people who read in the newspapers in '94 watched that on television when the CEOs were pointedly asked does your product cause cancer, they said no. Is it addictive, they said no.

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Don't you agree, based on your earlier testimony where you told me about what you think the publics perception is on these issues, that being the case, don't you think the public perception was that the CEOs were lying?

A. First of all, I don't believe that the CEOs said, when they were asked the question, do cigarettes cause cancer, I don't believe they said no.

Q. They said it hasn't been scientifically established.

A. I'm sure each one said a different thing, but I don't think they said no.

With regard to addiction, I think I answered that earlier, which was I considered the situation they were in to be untenable, and personally I would not, as an American citizen, have allowed myself to be put in that position having to give a yes or no to that question that's much more complicated and doesn't have a yes or no answer, and if they had been allowed to explain, I shouldn't say it this way, if I took my views about what we talked about addiction, and explained my view of pharmacological versus behavioral addiction, and I explained that, I

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don't think the American public would have thought I was lying.

Q. But getting back for the moment to these ads, facts you should know, secondhand smoke, were you misled, how to spot flaws in secondhand smoke stories, this was a Philip Morris campaign to discredit the findings of the Environmental Protection Agency.

A. At least to raise questions about them.

Q. Okay. And these were not ads trying to sell Marlboros.

A. You are very correct.

Q. Okay. I would like to have, I'm going to put these in as a composite, okay?

MR. HEIM: Just staple them together.

MR. HARDY: It's all right so long as we know what's all in them.

MR. ROSENBLATT: One ad is entitled secondhand smoke, our position word by word, what we already talked about. That was a separate exhibit how the EPA manipulated science to serve a political cause.

MR. HARDY: That was number nine.

MR. ROSENBLATT: That was number nine.

An ad titled were you misled. This week read

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another side of the story about secondhand smoke.

Another ad, the title of which is smokers and nonsmokers, facts you should know

MR. HARDY: Wait a minute. May I see that one? All right. Got it.

MR. ROSENBLATT: Another ad, the title of which is how to spot flaws in secondhand smoke stories. At the top a subheading is secondhand smoke facts finally emerge.

Another Philip Morris ad, were you misled, this week read another side of the story about secondhand smoke, and then another Philip Morris ad, this actually we have the date, June 30, 1994, in the New York Times, the title of which is how science and politics collided and balanced reporting was the casualty.

So we would offer those ads that I just recited as plaintiff's composite exhibit 10.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 10 for identification, a copy of which is attached hereto.)

BY MR. ROSENBLATT:

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Q. These public service ads, exhibit nine and exhibit 10, on the issue of secondhand smoke and the EPA, can you tell us the cost to Philip Morris? I think all or nearly all of the ads appeared within what, a couple of months in '94?

A. I don't know the exact cost. I would say -- I don't know where each of them ran.

As I remember our budgets, I would say five to seven million dollars.

Q. Okay. Offhand, what does a full page ad cost in the New York Times?

A. The New York Times, I think it's like $32,000.

Q. Now, you also had a series of public service ads on the accommodation program.

A. Yes.

Q. Okay. Now, Reynolds also had a series of ads where they used the word accommodation. I don't know if you are familiar with that.

A. I'm familiar that Reynolds ran advertising. I don't remember that they used accommodation.

Q. They did. I took the deposition on Monday of the CEO of Reynolds and we went through some of the ads, and without question, that word

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appears.

Now, in looking at the Philip Morris ads and the RJ Reynolds ads, although different, but they still use the word accommodation, that's the way to resolve these problems as opposed to having government attempt to resolve these problems, was that a campaign that was worked on together between Philip Morris and RJ Reynolds or did each company work totally independent of the other?

A. I think the, as Philip Morris, the accommodation effort started before I returned to domestic tobacco, but I would feel very comfortable in saying those were developed independently of each other.

Q. A document William L. Dunn, Junior, Philip Morris Research Center, Richmond, Virginia, motives and incentives in cigarette smoking.

I would like to have that marked as plaintiff's exhibit 11.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 11 for identification, a copy of which is attached hereto.)

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BY MR. ROSENBLATT:
Q So you now have plaintiff's exhibit 11 in front of you, William L. Dunn, Junior. Who is he?
A Bill Dunn. Is there a date on this memo?
Q They are talking about a conference that occurred, referred to as the Saint Martin conference in January of 1972. I think that's --
A Okay. That's fair enough. The Bill Dunn here would be Bill Dunn who worked in Philip Morris R and D in Richmond, research and development.
Q Was he head the of it or high up?
A No, I wouldn't characterize him. He certainly wasn't the head of it, and I wouldn't consider him as high up.
Q Okay. Are you familiar with the purpose of the Saint Martin conference?
A No, I'm not.
Q Look at page four. About one-third down from the top, number one, the statement is made no one has ever become a cigarette smoker by smoking cigarettes without nicotine.
Would you agree with that?

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A Could I take a minute and just acquaint myself with the document?
Q Sure, positively.
A I have no either what it is.
Q Positively.
MR. HARDY: By the way, while the witness is reading the document, Mr. Rosenblatt, when we are talking about making clean copies of these, that would include eliminating these other prior exhibit deals from prior cases, okay? Is that all right?
MRS. ROSENBLATT: Well, actually it was in the same case. That was marked at Dr. Spears deposition of '94 and it was marked again yesterday, I guess at the deposition.
MR. HARDY: Yes. I agree, if the exhibit is from this lawsuit, that's fine, but otherwise, I think clean copy means without anything else.
MRS. ROSENBLATT: Right. In some instances I may need your help to get the clean copy.
MR. HARDY: Actually, I guess properly what we would do is, if you say, for instance, that an exhibit has a mark on it from a prior

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deposition in this case, then the copy of the exhibit from that deposition would have only that exhibit number on it and if it's the same document, but with the plaintiff's exhibit 11 for Jim Morgan, then that would be the only exhibit number on it.
MRS. ROSENBLATT: I think so.
BY MR. ROSENBLATT:
Q Look at page five.
A I'm starting to scan it just so I get a feel for what this is all about.
Q Sure.
A Okay.
Q All right. Look at page five.
A All right.
Q The beginning of the second paragraph. Is it Mr. Dunn or Dr. Dunn?
A I do not know.
Q Okay. Quoting him, the cigarettes should be conceived not as a product, but as a package. The product is nicotine. Then go down several lines where he says think of the cigarette pack as a storage container for a day's supply of nicotine.
Now, if you just look at that language,

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what I've read, would you not agree that Dunn seems to be talking about nicotine as a drug of some kind?
A No.
Q Okay.
A No, I don't know that that's what it says.
Q Okay. He certainly, at least, that portion of what I read, obviously I've not read the whole thing, he's saying that the bottom line and the key and the essence and the reality of smoking is getting at that nicotine. That's what smoking is all about, nicotine.
A I think that that's a reasonable conclusion. I mean, I don't know if it's reasonable or slightly overstated, or what it is, but I'm not going to quibble with you that he certainly focused on nicotine here.
Q There never has been a cigarette that's been sold in America successfully that did not contain nicotine. Isn't that true?
A Well, there have been, I'm aware of two cigarettes that had basically no nicotine. One was introduced, gosh, '88, '89. I say we, I wasn't there. A brand called Next where Philip Morris

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spent 300 million dollars trying to develop a cigarette that had no nicotine.
Q What business is the guy in who came up with that idea?
A I think he's still around.
Q Working for Philip Morris?
A Yes. That's part of our culture again.
Q What's his name?
A I can't tell you who. It would be the current R and D and processing group, but yes, I can pretty well be well assured that the people who are involved in that are still around. I know one person who is involved in the marketing of it is definitely still around.
The product was introduced and it started off well, reasonably well and then it didn't do well, and to me as an observer, again, I have to take shots at things that I wasn't involved. I'll take a shot at the Benson and Hedges stuff because I was involved. I wasn't involved in this.
I think there were a lot of flaws in the packaging, the brand name on that product. There was another product that wasn't ours, and I'm guess it was back in the early '70's. It was a

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brand called Bravo, and Bravo was a brand made out of lettuce leaf which had no nicotine. I don't think you called that a cigarette, though, in the context of your question because I don't think a product made out of lettuce leaf would be classified as a cigarette. So no, there are no no nicotine brands.
There are, however, three brands on the market today which have a reasonable share of market which have, I don't know how to describe it, exceptionally small amounts of nicotine. Not no nicotine, but exceptionally small amounts.
Now, Carlton and Merit Ultima and those brands now I think have one and a half to two percent of the industry and have had it for a long time in the case of Carlton and Now. So there is evidence that with exceptionally small amounts of nicotine, that those products are commercially viable.
Q Well, maybe that one and a half percent of those people that hate the nicotine and just need something to do with their hands.
A That could very well be.
Q Was Next ever actually sold in retail stores?

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A Yes, it was.
Q For how long?
A I don't know.
Q I mean it bombed quickly. It wasn't like it was around for a couple of years.
A I don't think it was around for a couple of years. I'm really speculating. Sometime inside a year.
Q What was the reasoning? Why in the world develop a cigarette without nicotine and spend 300 million dollars doing that?
A Well, as I said before, Philip Morris is in the business of providing smokers with what smokers want, and if we don't do that, we are not in business, and with all the controversy around nicotine, I can't say I, because again I wasn't there, but knowing my company, I believe that Philip Morris assessed the situation and determined that there was business opportunity in producing a cigarette with no nicotine.
Q And needless to say, after the Next experiment, the experiment with Next, that was never attempted again by Philip Morris?
A What was never attempted again?
Q To produce a cigarette that did not

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contain nicotine.
A That did not contain nicotine. I'm not aware of any subsequent experiments.
Q If a memo crossed your desk today with that recommendation, I think you would very quickly dispose of it.
A That's not true. That's not true.
Q You would give it some thought?
A First of all, I don't dispose of documents, let's get that straight.
Secondly, I would give it thought, but what I would want to know is as a businessman again, what was new and different in our ability to do it, to balance the taste, to improve the marketing proposition, and what was there in the market place that gave people the thought that, whereas seven or eight years ago, people who said they were interested in no nicotine, turned out not to be, what was new and different today that would make it a reasonable expectation that it would be a commercial success, but I certainly wouldn't ignore it.
Q The next document dated September 8, 1971, from Dunn, Johnston, Ryan and Shari to Ioorn.

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MR. HARDY: What was the date again?
MR. HEIM: September 8th.
MR. HARDY: Excuse me. I don't have it yet.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 12 for Identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q Now, Mr. Morgan, the subject of this interoffice correspondence is plans for 1972.
The first sentence in the first paragraph on the first page, says our plans now are to concentrate upon that nicotine delivery range between .03 and 1.2 milligrams with a systematic manipulation of the nicotine tar ratio at incremental nicotine levels within this range.
Have I read that correctly?
A Yes, you have.
Q Okay. Now, Dr. Ioorn was who back in '71?
A I don't remember, but I think it's fair to guess he was an executive in R and D.

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Q Okay. Do you know any of the other people?
A Dunn, Johnston, Ryan, I know who they are. Shari, I don't know.
Q Okay. That's all I have on plaintiff's exhibit 12.
Plaintiff's exhibit 13, a document dated May 7, 1968, apparently from Dird, W. Dird to G. Berman, the title of which is TPM intake by smokers.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 13 for Identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q Who is Dird and who is Berman, if you know?
A Berman was probably a gentleman named George Berman. I don't know what role he would have played at that time, and I read this as Dunn, not Dird.
Q You are probably right. What does TPM mean?

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A I don't know.
Q Now, the second sentence says since there is evidence that the smoker adapts his puff, it is reasonable to anticipate that he adapts to maintain a fairly constant daily dosage.
Then we go down toward the bottom, the last paragraph, we are currently negotiating with a Ph.D. psychologist. If he joins us in September as hoped, I plan to have him devote two-thirds of his time to basic psychological research. We would want to institute a study of individual differences in inhalation quite early in his program.
Do you know whether this research was carried out?
A No, I do not.
MR. ROSENBLATT: Okay. The next document is dated November 14, 1972, an interoffice memo from Dunn to Ioorn.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 14 for Identification, a copy of which is attached hereto.)

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BY MR. ROSENBLATT:
Q Now, in the middle of the first page, there is a leading nicotine tar ratio.
A Uh-huh.
Q The second or third sentence, since the trend in tar delivery is downward, and since nicotine is presumed to be that which is sought by the smoker, does a cigarette with a high nicotine tar ratio have market potential.
Was that research done?
A I don't know whether that research was done. All these sort of early 1970 memos on the subject of nicotine, I think it's important to keep in context that at that point in time, many of the prominent scientists who were opposed to cigarette smoking, were raising the issue with us and with the government as to their thought that the best thing to do with cigarettes at that time was to lower tar, but maintain the nicotine levels. This was not us saying that. This was, as I remember people, like Dr. Gory or some of the other most prominent people, and there was a cooperative effort all the way through the early '70's into the late '70's, I think between the tobacco industry and, I guess the health arms of

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the US government and the anti smoking community to see whether or not cigarettes could actually be created to change the tar and nicotine ratio, so a lot of these documents would relate to that. We were being asked to do that work and that investigation as part of cooperation with the government. I mean, that's what I think of it.

Q The technology has existed for a long time, hasn't it, to have a both a low tar cigarette and a high nicotine cigarette, the same cigarette?

A No, I don't believe that's an accurate statement at all. I believe, my understanding is that almost universally the ratio of tar to nicotine in a cigarette is 10 to one, so that if you have a 15 milligram tar cigarette, it will have 1.5 milligrams of nicotine. If you have a 10 milligram cigarette, it will have one milligram of nicotine, and almost universally cigarette brands in the market place maintain that 10 to one ratio and I'm not aware of any technology that exists or was used to alter that ratio, except, I guess, for Next. Next would have done that by trying to take all the nicotine out.

Q Well, the technology for Next

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succeeded. The Next that was available to people had zero nicotine or it had some?

A I'm told that you couldn't say it had zero, that there were like some traces of it and I don't think it did say zero, but it was basically nonexistent.

Q The next document is, the title is 1600, smoker psychology, the date is October, 1975, subtitle is low delivery cigarettes and increased nicotine tar ratios, a replication, and this is apparently also written by Barbara Jones, Willie Hasik, Peggy Martin, approved by William L. Dunn, Junior and Leo F. Mayer, and this would be plaintiff's exhibit 15.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 15 for Identification, a copy of which is attached hereto.)

MR. MOSS: What is the date of that?

MR. ROSENBLATT: October of '75.

BY MR. ROSENBLATT:

Q Looking at page two, the heading of which is introduction.

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A Uh-huh.

Q Toward about the middle of the page in the second paragraph, about six lines down, if a low delivery cigarette with impact and flavor were developed, it may create the segment of current regular filter smokers who are concerned about their health, but demand a flavorful cigarette to voluntarily switch to the low delivery cigarettes. This may seem at first to be a senseless venture, since it might result in Marlboro smokers switching to this low delivery cigarette. However, we must recognize the possibility that if we do not develop such a cigarette, it may be developed by another tobacco company. Having developed such a cigarette would also give us an advantage in the event that the government imposes delivery restrictions.

Furthermore, some portion of current low delivery smokers may desire to switch to a more flavorful cigarette and others may follow as consumer experience results in changing the image of low delivery cigarettes so that smokers believe a flavorful cigarette can really be healthy.

What do you think of that paragraph?

A Well, my first thoughts on it is that its

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sort of ivory tower pie in the sky because it ignores the fact that Marlboro Lights had been on the market for four years by the time this memo was written, and that if you were worried about Marlboro smokers switching to a low delivery cigarette, there was a Marlboro in the marketplace. As I told you today, Marlboro Lights is the largest selling Marlboro packing, so without trying to denigrate the people who wrote the memo, it strikes me as a little out of touch of what our market position was.

Q And the last sentence is just silly, isn't it, talking about convincing smokers to believe that a flavorful cigarette can really be healthy?

A Well, my interpretation of that line is sort of that you have to look at the opposite side of that which is consumers perceptions that low delivery cigarettes don't taste good.

Q Yes, but whether they taste good or they don't taste good, there is no representation that any cigarette is healthy.

A Not by me there is not.

Q Page four, the top of the page.

The experimental cigarettes were

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targeted to deliver 10 milligrams tar with .07-.10 and .13 nicotine tar ratio. To obtain the two highest ratios, it was necessary to add supplementary nicotine in the form of nicotine citrate.

Now, having read that, I understand that to mean, please tell me if I'm correct, that the technology existed where you could add supplementary nicotine to a cigarette in the form of nicotine citrate.

A That's what that says, and it was done obviously for test procedures, and as I said, all this tar nicotine ratio work in the '70's was done in conjunction with the government, not other people.

MR. HARDY: Mr. Rosenblatt, I don't know where you are or how much longer you are going to need, if it's going to be a while, then I think we need to take a break. If you are about through, I don't mind.

MR. ROSENBLATT: Around a half hour.

MR. HARDY: All right. If you are going to be that long, let's take about a five minute break.

(Recess is taken in deposition.)

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(The document referred to was thereupon marked as Plaintiff's Exhibit Number 16 for Identification, a copy of which is attached hereto.)

BY MR. ROSENBLATT:

Q I'm showing you plaintiff's exhibit 16 which is a memorandum from Fred Panzer to Horace Cornegay. The subject is the Roper proposal.

Now, who's Fred Panzer?

A I think Fred Panzer was like the, he was at the Tobacco Institute -- actually, I don't know his position. He was at the Tobacco Institute.

Q And Horace Cornegay?

A He was head of the Tobacco Institute.

Q Okay. Roper, I assume, refers to the polling organization.

A Sure.

Q Okay.

A I don't know.

Q Are you familiar with this Roper proposal?

A No, I'm not.

Q Okay. Now, go to page two in about the

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middle. In the cigarette controversy, the public, especially those who are present and potential supporters, that is, tobacco state congressmen and heavy smokers, must perceive understand and believe in evidence to sustain their opinions that smoking may not be the causal factor.
Mr. Painter seems to be saying here that there is evidence and there are people who have the opinion, smokers who have the opinion that smoking may not be the causal factor of disease.
You would agree that there are still many smokers who fall in that category, don't you?
A No, I don't. I don't agree with that.
Q Because it's your position that the great majority of smokers today do believe that there is a causal relationship between cigarette smoking and cancer and other diseases?
A I do believe that, yes.
Q But you don't have any data for that, any particular data for that belief. I mean, that's just based upon your overall perception of what's going on?
A I can't quote any data, but I think I've seen data that suggests that the huge majority of the American people believe that.

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MR. ROSENBLATT: I want to put in as composite exhibit 17, some Tobacco Institute documents, a pamphlet, answers to the most asked questions about cigarettes, a pamphlet called the cigarettes controversy, a group of pages called the cigarette controversy, why more research is needed, an article from the Tobacco Institute which, the title of which is after millions of dollars and 20 years of research, the question of smoking and health is still a question, a booklet simply called the cigarette controversy, a publication of the Tobacco Institute, the title of which is the Tobacco Institute believes the American public is entitled to complete authenticated information about cigarette smoking and health, and the subtitle is the American Cancer Society does not seem to agree, a Tobacco Institute document from 1979, the title of which is fact or fancy, a dear doctor letter from the Tobacco Institute, the first sentence of which is which is the Tobacco Institute has not accepted the statistical association between cigarette smoking and lung cancer as etiologic proof because of the lack of biologic confirmation, a 1984 document of the Tobacco Institute called cigarette

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smoking and chronic obstructive lung diseases, the major gaps in knowledge, and I would want those marked as plaintiff's composite exhibit 17.
MR. HARDY: Mr. Rosenblatt, because of the number, could I have that copy so that I can identify copies here and put them together and then I'll know I've got what you are having marked?
MR. ROSENBLATT: Yes.
Can I ask general question in the meantime?
MR. HARDY: Sure.
BY MR. ROSENBLATT:
Q You heard me enumerate the titles of the various publications of the Tobacco Institute, and based on your experience in the industry, your contact with the Tobacco Institute, is it fair to say that these are fairly typical of the pamphlets and articles provided to members of the public by the Tobacco Institute over a period of years?
MR. HARDY: The problem with that general question is, Mr. Rosenblatt, he hasn't seen the documents yet.
MR. ROSENBLATT: Okay.
MR. HARDY: So —

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THE WITNESS: I would like to know the dates of the documents which you didn't say.
MR. ROSENBLATT: On a couple of them I was able to give you a date.
THE WITNESS: I would say that that was characteristic of the documents that the Tobacco Institute put out in the '70's. I think you mentioned one in the '80's. I don't think it's characteristic of what the Tobacco Institute puts out today.
BY MR. ROSENBLATT:
Q Well, doesn't the Tobacco Institute, even today, take the position that causation has not been scientifically established?
A I'm not sure. I'm sorry, I'm not sure what their position is exactly. I don't remember reading what their position is.
Q And don't they take the position that by the definition of addiction, that they choose to use, cigarette smoking is not addictive?
A Again, I have not recently read what their position is.
MR. HARDY: All right. I've been through them and we have a copy of all of these.
MR. ROSENBLATT: Okay.

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MR. HARDY: Put the clip on and have it marked.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 17 for identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q Does the Council for Tobacco Research in terms of filing its Federal income tax returns characterize itself as a trade association?
A I have no idea.
MR. ROSENBLATT: I want to mark this Federal, 1992 Federal income tax return of the Council for Tobacco Research as plaintiff's exhibit 18.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 18 for identification, a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q I presume you have never seen that

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document before?
A Not only have I not seen it, I don't know quite how to read it.
Q Okay. I'm not going to ask you any questions about it.
Do you know what special projects are in the context of the Council for Tobacco Research?
A No.
Q But that term you never heard before, special projects?
A No.
Q Okay. Have you ever heard of the committee of counsel?
A Yes, I have.
Q And what is that?
A Committee of counsel is part of the Tobacco Institute structure and is the committee of the lawyers from the various companies and there is a group that is a financial group, there is an executive committee which I'm on, and then there is the committee of counsel which is the lawyer from each company is on the committee of counsel.
Q What do they have to do? What does the committee of counsel have to do with overseeing or

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approving research grants given by the Council for Tobacco Research?
A I don't think anything.
Q So as far as you know, they are totally uninvolved in that process in terms of reviewing, approving or anything?
A As I said, I've been on the board of the counsel to tobacco research for two years and I never heard the committee of counsel even referenced in the meeting.
MR. ROSENBLATT: Next plaintiff's exhibit, which is 19, is a letter from H. Wakeman, vice-president, corporate research and development, to Senator Earl Clemmons of the Tobacco Institute. I do not notice a date on this.
MR. ROSENBLATT: It's faded out. I think it's 1970 something.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 19 for Identification, a copy of which is attached hereto.)
THE WITNESS: Another nice piece of type

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here.
BY MR. ROSENBLATT:
Q Right. In the second paragraph toward the bottom, our medical research. Follow along with me.
A Okay.
Q Our medical research support efforts through CTR and AMA have been confusing and contradictory in the public eye because we have, on the one hand, proclaimed these endeavors to be aimed at finding the truth about smoking and health, and at the same time denied the existence of a problem.
Then going down into the next paragraph, the second sentence, smoking is unquestionably psychologically and physiologically gratifying, and therefore, beneficial to the majority of smokers. We could do more research on the psychological and sociological aspects of smoking with a better understanding of the gratifications associated with smoking, we could stress these in our public defense of the industry. I feel confident many smokers, our best public supporters, will respond most favorably to evidence that they have justifiable psychological

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reasons for smoking. My only other feeling along this line is that our industry should develop a more favorable public impression by letting it be known that it is supporting quite a bit of unrestricted medical research as a pro bono publico gesture. This, in my opinion, is actually the case with about half of our CTR and AMA expenditures, maybe not intentionally, but much of the great work has little or no relevance to smoking or health in my opinion. Why not capitalize on this fact by putting our contributions in this light, instead of advertising them as a selfishly oriented program to get at the truth about smoking and health. Nobody believed we are interested in the truth on this subject, and the fact that a multi billion dollar industry has put up 30 million dollars to this over a 10 year period, cannot be impressive to a public which at the same time is told we spent upwards of three hundred million dollars in one year on advertising. We may be able to emphasize the benefits of smoking without talking about the risks implied by the statistics.
Have I read that accurately?
A Up to where you read, yes.

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Q I know I didn't read the whole thing. Is Wakeman someone you knew?
A Yes. I knew him.
Q Is a vice-president, corporate research and development, what is that, the number two person in research and development?
A No, I think at that time it would have been the number one person.
Q The number one person, okay.
And this letter went to J.F. Coleman the Third and what was his position?
A Well, did we establish the date of the document?
Q No. It's in the '70's.
A Well, I think all through the '70's, Mr. Coleman was chairman of the board of Philip Morris.
Q Okay. Millhiser?
A Not sure. It depends on the time, but probably if it were early in the '70's, it would have been president of Philip Morris, USA.
Q And Goldsmith was?
A He would have been head of operations at that time having manufacturing and R and D under him.

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MR. HARDY: How is it we established this was in the '70's?
MR. ROSENBLATT: Susan thought she saw a 7.
THE WITNESS: I think maybe I can help this way. Independent of the actual titles of those three gentlemen, that would have been all the way through whatever period, the hierarchy, with Coleman at the top, Millhiser second and Goldsmith third, and we have to slot in by year where they were.
MR. ROSENBLATT: One of the reasons is the next exhibit is December of '70 and it's a very closely related type document, so I believe on another copy somewhere it seemed like it was sometime in the early '70's.
MR. ROSENBLATT: Plaintiff's exhibit 20, the next numbered exhibit is dated December 8, 1970, from H. Wakeman to Mr. J.F. Coleman the Third, the subject is best program for the Council for Tobacco Research.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 20 for Identification,

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a copy of which is attached hereto.)
BY MR. ROSENBLATT:
Q Okay. The document which will be plaintiff's exhibit 20 dated December 8, 1970, from H. Wakeman to Mr. J.F. Coleman the Third, the subject is best program for Council for Tobacco Research, and I'm simply going to read to you this paragraph.
It has been stated that CTR's program to find out the truth about smoking and health. What is truth to one is false to another. CTR and the industry have publicly and frequently denied what others find as truth. Let's face it, we are interested in evidence which we believe denies the allegation that cigarette smoking causes disease. If the CTR program is aimed in this direction, it is, in effect, trying to proof the negative, that cigarette smoking does not cause disease. Both lawyers and scientists will agree that this task is extremely difficult, if not, impossible.
Do you basically -- that's the paragraphs that's yellowed and do you basically agree with that?
A I have no basis to have a judgment on

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it. This was something I wasn't involved in. It is Wakem, not Wake whatever you are saying.
Q Wakem?
A Wakem. In terms of the paragraph, I have no basis to make a judgment on it other than it sounds like a little professional rivalry going on.
Q Between who?
A Between Philip Morris scientists and CTR.
MR. ROSENBLATT: Okay. So the Court Reporter will mark exhibit 20 later.
MR. HEIM: Right. Although I would like to see it for just a minute.
MR. ROSENBLATT: This will be plaintiff's exhibit 21.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 21 for Identification, a copy of which is attached hereto.)
MR. HEIM: What's the date?
MR. ROSENBLATT: October 25, 1978, from Seligman to the CTR file about a CTR meeting which

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occurred October 18, 19, 20, 1978.
MR. HARDY: Go ahead.
BY MR. ROSENBLATT:
Q Okay. In the first paragraph, this sentence appears. Do you want to hand it to the witness?
MR. HARDY: Is it just one page?
MR. ROSENBLATT: Two pages. I'm only reading from the first page.
MR. HARDY: Look at your second page and see if it's dated.
MR. ROSENBLATT: You are absolutely correct. This is a different date.
MR. HARDY: It's just a one page document.
MR. ROSENBLATT: So it's just a one page document.
BY MR. ROSENBLATT:
Q Now, the sentence appears at the most recent meeting, Ed Jacobs was not present, but Ed Yeates said that certain grants would be reviewed by counsel after receiving EAB approval.
To your knowledge, why would there be a need for counsel to review any grants?
A I don't know.

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Q Okay. So this is exhibit 21.
A memo from J.L. Charles to Dr. Seligman, March 18, 1980, two pages. Subject, nicotine receptor program, University of Rochester. This will be plaintiff's exhibit number 22.
(The document referred to was thereupon marked as Plaintiff's Exhibit Number 22 for Identification, a copy of which is attached hereto.)
MR. MOSS: What is the date of this?
MR. ROSENBLATT: March 8, 1980.
MR. HARDY: I think we are getting within 10 or 15 minutes Mr. Morgan has to leave.
MR. ROSENBLATT: I'll be done if you guys would find the papers quicker.
Susan tells me this is the last document.
BY MR. ROSENBLATT:
Q Follow along with me, Mr. Morgan.
The first paragraph, nicotine is a powerful pharmacological agent with multiple sites of action and maybe the most important component

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of cigarette smoke. Nicotine and an understanding of its properties are important to the continued well-being of our cigarette business, since this alkaloid has been cited often as the reason for smoking and theories have been advanced for nicotine titration by the smoker.
Do you know what nicotine titration means?
A No.
Q Okay. Now, Mr. Charles is saying in the first sentence in the last paragraph on page one, the above is an excerpt from an introduction to the nicotine program which I wrote on December 1, 1978. My views have not significantly changed since that time.
Now, on page two, by the way, who is Charles, J.L. Charles?
A He was -- Jim Charles was a principal scientist at Philip Morris R and D.
Q With a Ph.D. in something or other?
A I don't know that.
Q Okay. Second page, second paragraph, in summary, the nicotine receptor program at the University of Rochester is an integral part of our overall nicotine program. The combination of

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basic research on the pharmacology of the nicotine receptor, combined with the capability to screen nicotine analogs for CNS activity, compliments our internal synthetic and behavioral efforts in the nicotine program.
What was the nicotine program, do you know?
A No, I don't.
Q And the last sentence, however, if we do not have the basic research results, this program will provide, we will not be in a position to respond if and when the pressures to change do occur, and I notice that a copy of this has gone to Dr. T.S. Osdene.
Who is that?
A He would also be a scientist, principal scientist at R and D.
Q Now, I had asked you earlier today about a frank statement to cigarette smokers and I believe you told me you had never read it.
A No, I've not read it.
Q Okay. I'm giving you a once in a lifetime opportunity.
Now, that is not necessarily precisely the way it appeared in the newspaper, but word for

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word, a word here and there may be misspelled, but that's precisely what appeared in every major newspaper in America in January, 1954.
A '54.
Q '54. Take a moment to read it.
MR. HARDY: Is this the retyped frank statement that you used earlier in the week?
MR. ROSENBLATT: It is.
MR. HARDY: Okay.
BY MR. ROSENBLATT:
Q Okay. Is there anything in that with which you disagree in terms of today?
Is there any statement made in there that you would take issue with today?
A I think that we are talking 43 years ago.
Q Correct.
A I don't know whether I take issue. I think some of the statements don't hold up as well today as they may have. I don't know because I wasn't involved in '54, but I think some of the statements are not real solid today.
Q Okay. Let me ask you specifically about a couple of them.
The statement is made that there is no

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proof that cigarette smoking is one of the causes, referring to lung cancer in the first column.
A Number three.
Q That there is no proof that cigarette smoking is one of the causes, and it refers to lung cancer.
That would still be as I've understood your testimony today, that's what you say today.
MR. HEIM: Objection to form. Stanley, let me put a objection. I think you mischaracterized his testimony, but go on.
BY MR. ROSENBLATT:
Q Okay. I understood you to say there is evidence out there about statistical associations and there is some epidemiological evidence, but today, as I've understood your testimony, you are still comfortable with the statement that there is no scientific proof that cigarette smoking is one of the causes of lung cancer?
A Well, rather than you characterize what I think I rather just restate it, if that's okay.
Q Fine.
A I believe there is, you say epidemiological statistical associations between smoking cigarette and lung cancer. I accept that,

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and I'm not sure, certainly I can't debate that, but I'm willing to say that's a non debatable factual issue.
What I said was that for over 40 years, that the process by which you go from a lit cigarette to lung cancer in a human being has not been documented, validated, determined, and in many, mostly, I should be careful saying this, I'm not sure it's been speculated because it's so far from being understood, and therefore, to say the word cause, there is no proof that cigarette smoking is one of the causes, is an accurate statement if you are talking about the process.
To say that there is no proof that cigarette smoking is one of the causes, if you were talking only about the epidemiological statistical part of it, is a little shaky statement because I think most people agree there are statistical associations.
Q But insofar as the classical precise definition of cause is concerned, we are in 1997, where we were in 1954.
A Well, oh, boy. I wasn't there in '54, but my guess is --
Q No. I guess in terms of the language of

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the frank statement, that there is no scientific proof that cigarette smoking causes lung cancer.
A I think since '54 there has been a rather large advance in understanding statistics of the issue, so I am saying that there is no proof that cigarette smoking is one of the causes basing that opinion on the fact that the process by which it happens has not been articulated, proven or validated or even speculated.
Q And the only way we are ever going to be able to get an answer to that question is by doing additional research and funding additional research?
A For me and my use of the word cause, that would be true, yes.
Q We can be sitting here or our children could be sitting here 43 years from now and still saying we need more research.
A Well, --
Q Because you have no idea when there will be an answer.
A Is that wrong, if it's not been shown how it happened?
Q I think it's very wrong if people are dying in the meantime and it's ultimately proven

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and established that there is cause and ultimately proven and established to the satisfaction of the tobacco industry and then all these millions of people would have died in the intervening 43 years.
MR. HARDY: Wait.
MR. HEIM: Object to form.
MR. HARDY: Wait, let's go back to the union format.
MRS. ROSENBLATT: We like this format.
BY MR. ROSENBLATT:
Q From your standpoint, you know, if our kids are here in 43 years still debating these same issues, nothing terrible about that?
A Is that a question?
Q Yes.
A I don't believe there is a debate. You and I are debating it because we are arguing over the word cause and the definition of cause. I don't believe there is a debate in our society, and if you believe, as I do, in the ultimate supremacy of adult informed free choice, then I would have to really debate in my mind whether it's better to act on what is assumed or whether it's better to act on what's known if the public

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belief is closer to what's assumed than what's known.
Q You don't believe there is a debate on the issue of cause?
A In the publics mind?
Q Correct.
A I believe, as I've said several times today, that I believe that the public assumes that smoking cigarettes causes lung cancer in some people. Sorry about that.
Q So there is a scientific consensus, a medical consensus and a public consensus, in your opinion, on the issue of causation, and the only segment of society which does not join in that consensus is the tobacco industry.
A I don't think that's a fair characterization.
Q Name another segment of society. You have told me the public believes it and they believe it based on the Surgeon General's and the public health community and doctors, and I'm asking you if you can name one other segment of society that doesn't believe cause has been scientifically established other than your industry?

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MR. HEIM: Object.
MR. MORR: Object to the form.
MR. HEIM: I'll object because it's been asked and answered and covered earlier.
BY MR. ROSENBLATT:
Q You can answer.
A First of all, I believe you really should talk to Dr. Ellis about that who's more attuned to what groups are saying than I am. I believe there are a majority of people who, without getting into the details of the discussion we've had about the lack of process documentation, that the majority of people do believe that if you smoke cigarettes, you run a very high risks of getting lung cancer.
Q You will never be satisfied on the issue of causes until it can be demonstrated to you that okay, a person smokes a cigarette, and gets lung cancer?
A If that --
MR. HARDY: Objection, asked and answered. He's explained what he needs to be satisfied. He's explained it.
BY MR. ROSENBLATT:
Q Explain it one more time and we will all

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go home.

A I would like for me to sit here and look at you and have you ask me do cigarettes cause lung cancer. I would like to be able to say to you, if the answer were yes, coming from me, from my mind and my heart and my sole, I would like to say yes, there is not only a statistical association, but you have convinced me because science now understands the process by which it happens, and in the absence of an understanding of the process by which it happens, we all can just rely on the statistical association which gets into the fact that cigarettes may possibly cause cancer and adults ought to know that.

Q If theoretically you became convinced that your product, if the process was so developed that you became satisfied yes, cigarette smoking does cause lung cancer, would you get out of the tobacco business?

A Is that a personal question?

Q Yes.

A No, I wouldn't.

MR. ROSENBLATT: That's all I have.

MR. HARDY: Okay.

THE WITNESS: Thank you.

MR. ROSENBLATT: Thank you.

(Thereupon the taking of the deposition was concluded.)

CERTIFICATE

STATE OF FLORIDA:
COUNTY OF DADE:

[illegible]

READING AND SIGNING

I have read the above transcript, pages 1 through 266, and I find: (MARK ONE)

( ) The transcript is true, correct, and completely accurate.

( ) The transcript is true, correct, and accurate, except as set forth in my List of Corrections attached hereto, citing page and line and reason for the correction realizing that, for this purpose, I am still under oath.

_____
(DATE) JAMES J. MORGAN

Sworn to and subscribed before me this _____ day of _____, 1997.

Notary Public

My Commission expires:

TO BE EXECUTED BY THE NOTARY IF THE DEPONENT DOES NOT SIGN:

I hereby certify that a letter with reference to reading and signing deposition was mailed to the witness through his attorney, on _____, 1997, and that the witness

( ) Witness refused to sign, giving the following reason:

( ) Neither the witness nor his attorney has responded to request to read and sign.

_____
(DATE) Notary Public

MY COMMISSION EXPIRES:

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